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Notice of Appeal.

(Filed November 24, 1930.)

In Chancery of New Jersey

10

Between

LAWRENCE DOBBELAAR,
Complainant,

and

JOHN EDWARD HUGHES, MATTIE
BEERE HAWORTH, MARGARET
BEERE and PAULA B. SMYTHE,
as administratrix of the estate
of GEORGE A. SMYTHE, de-
ceased, *et als.*,

Defendants.

On Bill, &c.
63/412.

20

The complainant, Lawrence Dobbelaar, hereby
appeals from so much of the final decree made
in the above entitled cause on the Seventeenth day
of November, 1930, by his Honor, Edwin Robert
Walker, Chancellor of the State of New Jersey
(Advised by Vice-Chancellor John O. Bigelow), as
decrees:

30

“* * * that the said complainant, Lawrence
Dobbelaar, has no estate or interest in or encum-
brance upon said lands and premises, or any part
thereof; and that his said bill of complaint be, and
the same is hereby dismissed.

“It is further ORDERED, ADJUDGED AND DECREED
that as to all of the said lands and premises de-

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Notice of Appeal.

scribed in the said bill of complaint, which lands and premises are described as follows:

10 All those certain lots, tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Fort Lee, in the County of Bergen, and State of New Jersey, and which on a map entitled 'Map of Pond Park situate at Fort Lee Village, Town of Hackensack, Bergen County, New Jersey,' filed in the office of the Clerk of Bergen County, April 7, 1864, are known as lots numbered 9, 10 and 11 fronting on a road leading from Fort Lee Turnpike Road to Bulls Ferry and lots numbered 32, 33 and 34 fronting on Elizabeth Street at the corner of Parker Avenue as laid down on said map.

20 Being the secondly described parcel of land and premises conveyed by a certain deed made by Isaac Hopper, Sheriff of the County of Bergen to John Edward Hughes, dated March 6, 1882, recorded March 10, 1882, in the office of the Clerk of the County of Bergen in Liber C-11 of Deeds for the County of Bergen on page 311.

30 Being also the same premises conveyed by Franklin Wight and Mary E., his wife, to Daniel O'Connell, by deed dated June 25, 1864, recorded July 17, 1864, in the office of the Clerk of the County of Bergen in Book X-5 of Deeds for said County on page 62;

40 so far as relates to any claim thereon by or on behalf of the complainant or of any of the defendants herein except Margaret Beere and Mattie Beere Haworth, title of the said defendant Mar-

Petition of Appeal.

garet Beere in and to the same and every part thereof is hereby determined, fixed and settled, and declared to be good, and that she is seized of said premises in fee simple, subject only to the right of dower of the defendant Mattie Beere Haworth in and to said lands and premises." 10

to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated November 22, 1930.

SEUFERT & ELMORE,
Solicitors for and of Counsel with
Complainant Lawrence Dobbelaar.

I conceive there is good cause for appeal in the above entitled cause. 20

RYLAND E. LIPPINCOTT,
Of Counsel with Complainant
Lawrence Dobbelaar.

Service acknowledged November 22, 1930.

FRANK W. HEILENDAY,
Solicitor for the Defendants Margaret Beere and Mattie Beere Haworth. 30

Petition of Appeal.

(Filed November 24, 1930.)

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Lawrence Dobbelaar, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Hon- 40

Petition of Appeal.

10 or, Edwin Robert Walker, Chancellor of the State
of New Jersey (Advised by Vice-Chancellor John
O. Bigelow), bearing date the Seventeenth day of
November, 1930, in a certain cause in the said
Court of Chancery wherein the same Lawrence
Dobbelaar was complainant and the said John Ed-
ward Hughes, *et als.*, were defendants, in this re-
spect, to wit, that the said decree adjudges that
the complainant has no estate or interest in or en-
cumberance upon the lands and premises described
in the bill of complaint, or any part thereof, and
that the complainant's bill of complaint should
be dismissed; that the title of Margaret Beere is
determined, fixed and settled, and declared to be
20 good and that she is seized of said premises in fee
simple, subject only to the right of dower of the
defendant, Mattie Beere Haworth, in and to said
lands and premises;

And your petitioner appeals from the said
decree of the Chancellor, from so much of the
said decree of the Chancellor which decrees as
aforesaid, upon the ground that the same is er-
roneous, in that the said decree adjudges that this
appellant has no estate or interest in or encum-
brance upon the lands and premises described in
30 the bill of complaint and that the appellant's bill
of complaint be dismissed, and that Margaret Beere
has good title to the premises, subject only to the
right of dower of the said Mattie Beere Haworth.

Your petitioner, therefore, prays that the said
decree of the said Chancellor may be, in the par-
ticulars aforesaid, reversed, set aside and for noth-
ing holden, and that petitioner may have such other
relief in the premises as this Court shall deem
40 proper.

SEUFERT & ELMORE,
Solicitors for and of counsel with Appellant.

Answer to Petition of Appeal.

Service of a copy of the Petition of Appeal, in the above-entitled cause, is hereby acknowledged this 1st day of December, 1930.

FRANK W. HEILENDAY,
Solicitor for Defendants-Appellees,
Margaret Beere and Mattie Beere
Haworth.

10

Answer to Petition of Appeal.

The answer of Margaret Beere and Mattie Beere Haworth, the above named appellees, to the petition of appeal of Lawrence Dobbelaar, the above named appellant.

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These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the 17th day of November, 1930, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced.

30

These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

FRANK W. HEILENDAY,
Solicitor for and of Counsel with Appellees.

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Bill of Complaint.

(Filed March 9, 1927.)

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

10 The complainant, Lawrence Dobbelaar of the Borough of Fort Lee, in the County of Bergen and State of New Jersey, respectfully shows that:

1. On March 6, 1882, one Isaac Hopper, Sheriff of the County of Bergen, conveyed to John Edward Hughes, for a full and valuable consideration by Sheriff's Deed in fee simple, the following described land and premises, in the Borough of Fort Lee, in the County of Bergen and State of New
20 Jersey:

ALL those certain lots, tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Fort Lee, in the County of Bergen in the State of New Jersey, and which on a map entitled "Map of Pond Park situate at Fort Lee Village, Town of Hackensack, Bergen County, New Jersey," filed in the office of the Clerk of Bergen County April 7, 1864, are known as lots numbered 9, 10 and 11 fronting on a road leading from Fort Lee Turnpike Road to Bulls Ferry and lots numbered 32, 33 and 34 fronting on Elizabeth Street at the corner of Parker Avenue as laid down on said map.

30

Being the secondly described parcel of land and premises conveyed by a certain deed made by Isaac Hopper, Sheriff of the County of Bergen to John Edward Hughes, dated March 6, 1882, recorded March 10,
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Bill of Complaint.

1882, in the office of the Clerk of the County of Bergen in Liber C-11 of Deeds for the County of Bergen on page 311.

Being also the same premises conveyed by Franklin Wight and Mary E., his wife, to Daniel O'Connell, by deed dated June 25, 1864, recorded July 17, 1864, in the office of the Clerk of the County of Bergen in Book X-5 of Deeds for said County on page 62.

10

2. The complainant is informed and verily believes that the said John Edward Hughes, died an inmate of the State Asylum for the Insane, in Flushing, in the State of New York, on or about November 30, 1902.

3. The complainant went into possession of the above described premises in December, 1891, and paid rent therefor to the said John Edward Hughes, or to his guardian, James T. Williamson at the rate of Eight Dollars (\$8.00) per month from the time he went into possession, until November 7, 1902, since which time this complainant has ceased and refused to pay any rent for said premises.

20

4. This complainant has been in open, actual, exclusive, continued, continuous, undisturbed and uninterrupted possession of said premises since November 7, 1902, and has paid all taxes and other municipal liens and charges thereon since 1904, has paid water rent, and made repairs, alterations, and additions to the house, and in all other respects has exercised complete ownership to said premises.

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5. In the year 1904, numerous persons claiming to be the heirs of the said John Edward Hughes,

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Bill of Complaint.

claimed ownership to the premises and demanded possession, but this complainant denied the ownership of said claimants and refused to give up possession of the premises.

10 6. In 1907, a man by the name of Edmond Hughes, who resided in the State of Illinois and claimed to be a half-brother of the said John Edward Hughes, demanded possession of the property or that this complainant purchase the said property from the said Edmond Hughes. This complainant refused either to deliver possession of the property to the said Edmond Hughes, or to purchase the same from him.

20 7. In February, 1915, one Mattie Beere who claimed herself to be a resident of Marionville, in the State of Missouri, claimed that she, the said Mattie Beere, and Margaret Beere, her daughter, had an interest in the premises described in this bill of complaint, and instituted a suit in ejectment in the Supreme Court of New Jersey, individually and as guardian and curator of the said Margaret Beere. The suit was never brought to trial and in the October, 1926, term, of the said Supreme Court, a judgment *non pros* was entered.

30 8. The heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of the said John Edward Hughes claim or may claim to own the premises in this bill of complaint or some part thereof or some interest therein, or to hold some lien or encumbrance thereon.

40 9. Complainant does not know whether the said John Edward Hughes was married. The complainant therefore alleges that Mrs. John Edward

Bill of Complaint.

Hughes, the widow of said John Edward Hughes claims or may claim a right of dower in said lands and premises.

10. Complainant does not know whether the said Edmond Hughes is married. The complainant therefore alleges that Mrs. Edmond Hughes, the wife of said Edmond Hughes, claims or may claim a right of dower in said lands and premises. 10

11. Mattie Beere is a married woman, but complainant notwithstanding inquiry has been made therefore, has not been able to ascertain the Christian name of her husband. The complainant therefore alleges that Mr. Beere the husband of said Mattie Beere claims or may claim a right of curtesy in said lands and premises. 20

12. Complainant does not know whether the said Margaret Beere is married. Complainant therefore alleges that Mr. Beere, the husband of said Margaret Beere, claims or may claim a right of curtesy in said lands and premises.

13. That the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of the said John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, Mr. Beere, husband of said Mattie 30
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Bill of Complaint.

10 Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of Edmond Hughes, are proper parties defendant to this bill of complaint; but complainant after diligent and careful inquiry therefor, made as in the case of absent defendants, has been unable to ascertain the names and residences of the heirs, devisees and personal representatives of the said John Edward Hughes, or their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, or such of them as may be proper parties defendant, and has been unable to ascertain whether the said Edmond Hughes, Mattie Beere and Margaret Beere are still alive.

20 14. No suit is now pending to enforce or test the validity of any of the defendants' titles, claims or encumbrances.

Complainant is without adequate remedy in the courts of law and therefore prays:

30 1. That John Edward Hughes, the names and residences of whose heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, or such of them as may be proper parties defendant, complainant has been unable to ascertain, and Mattie Beere, Margaret Beere and Edmond Hughes, each of whom complainant has been unable to ascertain to be still alive, and their and each of their heirs, devisees and personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, Mrs. Edmond Hughes, wife of said Edmond Hughes, Mr. Beere, husband of Margaret Beere, and Mr. Beere, hus-

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Affidavit of Lawrence Dobbelaar.

band of Mattie Beere, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That each of the said defendants may set forth and specify his or her title, claim or encumbrances to or upon the lands and premises hereinbefore described, and how and by what instrument the same is derived or created. 10

3. That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this court, and that the complainant may be decreed to have a perfect title thereto and the said defendants and each of them to have no estate, interest or any right in or encumbrance upon said lands or any part thereof. 20

4. That a writ of subpoena may issue commanding the said defendants and each of them to answer this bill of complaint and to abide by such decree as this court may make in the premises.

SEUFERT & ELMORE,
Solicitors for and of counsel
with Complainant.

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Affidavit of Lawrence Dobbelaar.

State of New Jersey, }
County of Bergen, } ss.:

LAWRENCE DOBBELAAR, of full age being duly sworn upon his oath, according to law, deposes and says:

1. I am the complainant in the foregoing bill of complaint named; I have read the same and am familiar with the contents thereof, and the matters and things therein contained are true. 40

Affidavit of Lawrence Dobbelaar.

2. In December, 1891, I rented the premises described in the bill of complaint to which this affidavit is annexed, from John Edward Hughes, the then owner of the property and moved in possession during the last week in December, 1891. I
10 paid rent for this property to the said John Edward Hughes or to James T. Williamson, the guardian of John Edward Hughes, until November 7, 1902, the date upon which the last payment of rent was made by me.

3. I am informed and verily believe that the said John Edward Hughes died an inmate of the State Asylum for the Insane in Flushing, in the State of New York, on or about November 30, 1902.

20 4. In 1904, several people, the names of whom I have forgotten, called at my residence and demanded possession of the property, claiming to be the heirs of the said John Edward Hughes. I disputed their claim and refused to deliver possession of said premises. I have heard nothing further from them.

30 5. In 1907, one Edmond Hughes, who claimed to be a resident of Hamburg, in the State of Illinois and also claiming to be a half-brother of the said John Edward Hughes, called at my home and demanded that I either deliver possession of the property to him or purchase the same from him. I refused to do either, and have heard nothing further from him.

40 6. In 1915, one Mattie Beere who alleged herself to be a resident of Marionville, in the State of Missouri, instituted a suit in ejectment in the Supreme Court of this State, individually and as guardian and curator of one Margaret Beere. In

Affidavit of Lawrence Dobbelaar.

the said suit the plaintiffs alleged themselves to be the only heirs of the said John Edward Hughes. I defended this suit. The suit was never brought to trial and a judgment *non pros* in favor of me as defendant and against the plaintiffs was entered in the Supreme Court in the October Term, 1926.

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7. I have been in open, actual, exclusive, continued, continuous, undisturbed and uninterrupted possession of the premises described in the bill of complaint since the last week of December, 1891. From the time I entered into possession thereof until November 7, 1902, I paid rent therefor. I have not paid any rent for said premises since November 7, 1902, and although during the year 1904, and since then, numerous persons have demanded that I deliver possession of said premises to them or buy the said premises from them, I have refused in each and every instance to either purchase said premises or deliver said premises to the claimants.

20

8. I have paid all taxes and municipal liens and charges assessed by the Borough of Fort Lee, since 1904, and I have made repairs, alterations and additions to the house on said premises, and in all other respects I have exercised complete ownership of said premises for more than twenty years next preceding the commencement of this suit.

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9. There is no suit now pending to test or enforce the validity of any of the defendants' titles, claims or encumbrances.

LAWRENCE DOBBELAAR.

Sworn to and subscribed before me }
this 1st day of March, 1927. }

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JEANIE E. STEPHEN,
Notary Public of New Jersey.

Affidavit of Ryland E. Lippincott.

State of New Jersey, {
 County of Bergen, } ss.:

10 RYLAND E. LIPPINCOTT, of full age, being duly sworn upon his oath, according to law, deposes and says:

1. I am an attorney and counsellor at law of the State of New Jersey, in the office of Seufert & Elmore, solicitors for the complainant in the above entitled cause.

20 2. The heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes, and Mattie Beere, Margaret Beere and Edmond Hughes and each of their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of John Edward Hughes, Mr. Beere, husband of Margaret Beere, Mr. Beere, husband of Mattie Beere, and Mrs. Edmond Hughes, wife of Edmond Hughes, are proper parties defendant to said bill of complaint.

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3. I have in good faith, made diligent and careful inquiry, not only in the manner directed by the rules of this court as in the case of absent defendants, but also from other sources which I thought it probable that I might be able to ascertain whether the said Mrs. John Edward Hughes, widow of John Edward Hughes, Mattie Beere, Mr. Beere, husband of Mattie Beere, Margaret Beere, Mr. Beere, husband of Margaret Beere, Edmond Hughes, and Mrs. Edmond Hughes, wife of Edmond Hughes, are still alive, and have been un-

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Affidavit of Ryland E. Lippincott.

able to ascertain any information whatever in reference thereto.

4. I have also in like manner made diligent and careful inquiry for the names and residences of the heirs, devisees and personal representatives of the said John Edward Hughes, Mrs. John Edward Hughes, widow of John Edward Hughes, Mattie Beere, Mr. Beere, husband of Mattie Beere, Margaret Beere, Mr. Beere, husband of Margaret Beere, Edmond Hughes, Mrs. Edmond Hughes, wife of Edmond Hughes, and their or any of their heirs devisees, executors, administrators, grantees, assigns or successors in right, title or interest, or such of them as are proper parties defendant, but have been unable to ascertain their names and present residences.

5. The only information that I have been able to secure is, that in the year 1919, Mattie Beere alleged herself to be a resident of Marionville, in the State of Missouri, and in 1907, Edmond Hughes was a resident of Hamburg, in the State of Illinois.

RYLAND E. LIPPINCOTT.

Sworn to and subscribed before me }
this 8th day of March, 1927. }

ISABEL E. COLLINS,
Notary Public of N. J.

Order of Publication.

(Filed March 23, 1927.)

The complainant, Lawrence Dobbelaar, having filed his bill of complaint herein, wherein the heirs, devisees or personal representatives, their or any

10 of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any

20 of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, were made defendants, and a subpoena having duly issued against the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors

30 in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John

40 Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mat-

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tie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, to appear in this suit as such defendants;

And it having been made to appear by affidavit to the satisfaction of the Chancellor that the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, cannot, upon due inquiry, be found in this state, and that process cannot be served upon the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators,

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Order of Publication.

grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, within this State;

10

And it appearing by the allegations of said bill of complaint, duly verified by affidavit thereto annexed, that the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, are proper parties defendant to said bill of complaint;

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And it further appearing that the said complainant, after diligent and careful inquiry therefor, made as in the case of absent defendants, has been unable to ascertain the names and residences of the heirs, devisees or personal representatives, of the said John Edward Hughes, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or in-

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terest, or such of them as may be proper parties defendant; and it further appearing that the said complainant after diligent and careful inquiry therefor, made as in the case of absent defendants has been unable to ascertain whether Mrs. John Edward Hughes, widow of John Edward Hughes, Mattie Beere, Mr. Beere, husband of Mattie Beere, Margaret Beere, Mr. Beere, husband of Margaret Beere, Edmond Hughes, Mrs. Edmond Hughes, wife of Edmond Hughes, are still alive. 10

It is thereupon, on this 23rd day of March, 1927, ORDERED that the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes, Mattie Beere and Margaret Beere and their and each of their heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, appear and answer the complainant's bill of complaint on or before the 24th day of May next, or that in default thereof such decree be made against them as the Chancellor shall deem just and equitable. 20 30

It is further Ordered that the notice required by law to be published against absent defendants in default of personal service, which notice shall con- 40

Order of Publication.

tain a description of the lands and premises mentioned and described in said bill of complaint sufficient to identify the same, and shall be addressed to the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes; Mattie Beere and Margaret Beere and their and each of their heirs, devisees, or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Edmond Hughes, and his heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of Edmond Hughes, shall, within fifteen days after the date hereof, be posted in three conspicuous places upon the said lands and premises, and shall also be published in the Englewood Press and The Bergen Evening Record, two of the public newspapers printed in this state, for four weeks consecutively, at least once in each week, the first publication to be made within fifteen days after the date hereof; and that a copy of said notice addressed to "The heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of the said John Edward Hughes, or to the last known post office at which the said John Edward Hughes, usually

Order of Publication.

received his letters; and that a copy of said notice addressed to "Mrs. John Edward Hughes, widow of John Edward Hughes," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of said Mrs. John Edward Hughes, widow of John Edward Hughes, or to the last known post office at which the said Mrs. John Edward Hughes, usually received her letters; and that a copy of said notice addressed to "Mattie Beere and Mr. Beere, husband of Mattie Beere, and the heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of Mattie Beere," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of said Mattie Beere, or to the last known post office at which Mattie Beere usually received her letters; and that a copy of said notice addressed to "Margaret Beere and Mr. Beere, husband of Margaret Beere, and the heirs, devisees, or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of Margaret Beere," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of said Margaret Beere, or to the last known post office at which Margaret Beere, usually received her letters; and that a copy of said notice addressed to "Edmond Hughes and Mrs. Edmond Hughes, wife of Edmond Hughes, and the heirs, devisees, or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of Edmond Hughes," be mailed prepaid,

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Answer and Counterclaim.

within fifteen days after the date hereof, directed to the post office nearest the last known residence of Edmond Hughes, or to the last known post office at which the said Edmond Hughes, usually received his letters.

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E. R. WALKER,
C.

A true copy.
THOMAS BARBER.

**Answer and Counterclaim of Defendants
Margaret Beere and Mattie Beere Haworth.**

(Filed June 3, 1927.)

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Answer of the defendants Margaret Beere and Mattie Beere Haworth, and the counterclaim of said defendants against the complainant.

These defendants Margaret Beere and Mattie Beere Haworth, answering the bill of complaint, say that:

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1. Paragraph one is admitted.

2. These defendants deny that said John Edward Hughes died on or about November 30, 1902, but say that he died on January 28, 1903.

3. These defendants have no knowledge or information thereof sufficient to form a belief as to the allegations of paragraph three.

4. Paragraph four is denied.

5. These defendants have no knowledge or information thereof sufficient to form a belief as to the allegations of paragraphs five and six.

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6. Paragraphs seven and eight are admitted.

7. Paragraphs nine and ten are denied.

Answer and Counterclaim.

8. These defendants admit that the defendant Mattie Beere Haworth is a married woman, but say that her husband has no right of courtesy, or any other interest in said lands and premises.

9. These defendants say that the defendant Margaret Beere is unmarried. 10

10. Paragraph fourteen is admitted.

11. These defendants say that the said John Edward Hughes died intestate on January 28, 1903, leaving him surviving as his only heir at law and next of kin Percy C. Beere, a maternal uncle. Said Percy C. Beere died intestate October 4, 1904, leaving his wife, Mattie, and his daughter Margaret Beere, an infant three months old, his only heir at law and next of kin. That the said Margaret Beere thereupon became seized of the said lands and premises described in the bill of complaint, in fee simple, subject to the right of dower of her mother, who subsequently remarried and is now the defendant Mattie Beere Haworth. 20

12. These defendants claim that the defendant Margaret Beere is seized of and entitled to said premises in fee simple, as the heir at law of John Edward Hughes, deceased, subject to the right of dower of the defendant Mattie Beere Haworth. 30

By way of counterclaim against the complainant, the defendants Margaret Beere and Mattie Beere Haworth say that:

1. From October 4, 1904, the complainant has been in possession of the lands and premises described in the bill of complaint, and has received and appropriated to his own use the rents, issues and profits of said land and premises, and has 40

Consent Order of Reference.

had the use and occupation of a portion of the said lands and premises without paying any rent therefor to the defendants.

These defendants therefore pray:

10 1. That the said complainant, Lawrence Dobbe-
laar, may answer this counterclaim and each state-
ment therein made.

2. That the said complainant may be decreed to account for all money received by him as rents, issues and profits of said lands and premises, and also for the value of the portion of said lands and premises occupied by him.

20 3. That the said complainant may be decreed to pay to the defendants Margaret Beere and Mattie Beere Haworth the amount so found due on said accounting.

4. That these defendants may have such other relief as may be just.

FRANK W. HEILENDAY,
Solicitor and of Counsel with De-
fendants Margaret Beere and
Mattie Beere Haworth.

30

Consent Order of Reference.

This matter being opened to the court by Seufert & Elmore, solicitors of the complainant, and it appearing that Frank W. Heilenday, solicitor for the defendants, Margaret Beere and Mattie Beere Haworth, has consented hereto:

40 It is on this 21st day of June, 1927, on motion of Seufert & Elmore, solicitors for Complainant, ORDERED that the above entitled cause be referred to Hon. John Bentley, one of the Vice-Chancellors

Decree Pro Confesso and Final Decree.

of this court, to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,

C. 10

We hereby consent to the entry of the foregoing order.

FRANK W. HEILENDAY,
Solicitor for Defendants
Mattie Beere Haworth
and Margaret Beere.

SEUFERT & ELMORE,
Solicitors for Complainant.

A true copy.

THOMAS BARBER,

Clerk.

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Decree Pro Confesso and Final Decree.

(Filed July 1, 1927.)

This matter being opened to the court by Seufert & Elmore, solicitors for the complainant, and it appearing that process of subpoena calling upon the defendants to answer the complainant's bill of complaint filed herein, has been duly issued and returned *non est* by the Sheriff of the County of Bergen as to all of the defendants;

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And it further appearing that due notice of the order of this court, made on the 23rd day of March, 1927, directing the defendants, the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes; Mattie Beere and

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Decree Pro Confesso and Final Decree.

Margaret Beere and their and each of their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Edmond Hughes, and his heirs, devisees, or
10 personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, to appear and answer the complainant's bill of complaint filed herein on or before the 24th day of May, 1927, has been duly published,
20 posted and also mailed to the said defendants in accordance with the rules of this court as directed in and by the said order, and in the manner therein prescribed; that the said defendants, the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes (except Mattie Beere Haworth and Margaret Beere); and Edmond Hughes, and his heirs, devisees or personal representatives, their or any of their heirs, devisees, ex-
30 ecutors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, have not filed any answer to the said bill of complaint within the time required by law, but have wholly failed and neglected so to do;

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It is thereupon on this Thirtieth day of June,

Decree Pro Confesso and Final Decree.

1927, on Motion of Seufert & Elmore, solicitors for the complainant, ORDERED, that the said complainant's bill of complaint be and the same hereby is taken as confessed against the said defendants, the heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes (except Mattie Beere Haworth and Margaret Beere); and Edmond Hughes, and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes;

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It is further Ordered, Adjudged and Decreed that the said defendants, the heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of John Edward Hughes (except Mattie Beere Haworth and Margaret Beere); and Edmond Hughes and his heirs, devisees, or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, have no estate or interest in or encumbrance upon said lands and premises or any part thereof;

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Decree Pro Confesso and Final Decree.

It is further Ordered, Adjudged and Decreed, that as to all of the said lands and premises described in said bill of complaint, to wit:

10 "All those certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Fort Lee, in the County of Bergen and State of New Jersey, and which on a map entitled "Map of Pond Park, situate at Fort Lee Village, Town of Hackensack, Bergen County, New Jersey," filed in the office of the Clerk of Bergen County, April 7, 1864, are known as lots numbered 9, 10 and 11 fronting on a road leading from
20 Fort Lee Turnpike Road to Bulls Ferry and lots numbered 32, 33 and 34 fronting on Elizabeth Street at the corner of Parker Avenue as laid down on said map.

30 "Being the secondly described parcel of land and premises conveyed by a certain deed made by Isaac Hopper, Sheriff of the County of Bergen to John Edward Hughes, dated March 6, 1882, recorded March 10, 1882, in the office of the Clerk of the County of Bergen in Liber C-11 of Deeds for the County of Bergen on page 311.

"Being also the same premises conveyed by Franklin Wight and Mary E., his wife to Daniel O'Connell, by deed dated June 25, 1864, recorded July 17, 1864, in the office of the Clerk of the County of Bergen in Book X-5 of Deeds for said County on page 62;"

40 so far as relates to any claim thereon by or on behalf of said defendants, the heirs, devisees or personal representatives, their or any of their heirs,

Replication and Answer to Counterclaim.

devises, executors, administrators, grantees, assigns, or successors in right, title or interest of John Edward Hughes (except Mattie Beere Haworth and Margaret Beere); and Edmond Hughes, and his heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and Mrs. John Edward Hughes, widow of said John Edward Hughes, deceased, Mr. Beere, husband of said Mattie Beere, and Mr. Beere, husband of said Margaret Beere, and Mrs. Edmond Hughes, wife of said Edmond Hughes, or either or any of them, the title of the said complainant, Lawrence Dobbelaar, in and to the same and every part thereof is hereby determined, fixed and settled, and declared to be good.

E. R. WALKER,
C.

Respectfully advised,
BAYARD STOCKTON, A. M.

A true copy.
THOMAS BARBER,
Clerk.

Replication and Answer to Counterclaim.

(Filed June 11, 1927.)

The complainant joins issue on the answer of the defendants, Margaret Beere and Mattie Beere Haworth.

As to the counterclaim contained in said answer, complainant says:

He denies paragraph one of the counterclaim, except so much thereof as alleges that from October 4, 1904, he has been in possession of the lands

Order Admitting Party Defendant.

and premises described in the bill of complaint and has had the use and occupancy of a portion of said lands and premises.

SEUFERT & ELMORE,
Solicitors for Complainant.

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Order Admitting Party Defendant.

(Filed October 14, 1930.)

Application having been made in open court at the final hearing of the above-entitled cause by Paula Smythe, as Administratrix of the Estate of George A. Smythe, deceased, to be admitted as a party defendant herein, in the presence of Ryland E. Lippincott, of Seufert & Elmore, Solicitors of Complainant, and Frank W. Heilenday, and John J. Dwyer, Proctor of the New York Bar, Solicitors for the answering defendants, Mattie Beere and Margaret Beere, and the Solicitors for the complainant and the Counsel for the answering defendants having consented thereto;

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It is on this Fourteenth day of October, 1930, on motion of Paula Smythe, as Administratrix of the Estate of George A. Smythe, deceased, ORDERED that the said Paula Smythe, as Administratrix of the Estate of George A. Smythe, deceased, be, and she is hereby admitted as a party defendant in the above-entitled cause.

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It is further ORDERED that the said Paula Smythe, as Administratrix of the Estate of George A. Smythe, deceased, file her answer to the bill of complaint filed herein *nunc pro tunc*, as within time, within ten (10) days from the date herein.

40

Order of Re-reference.

It is further ORDERED that the replication heretofore filed by the complainant, be, and the same hereby is ordered to be a replication to the answer filed by the said Paula Smythe, as Administratrix of the Estate of George A. Smythe, deceased.

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It is further ORDERED that the testimony and proofs submitted at the prior hearing be, and the same hereby is binding upon all parties to this suit.

E. R. WALKER,
C.

Respectfully advised,
JOHN O. BIGELOW,
V. C.

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Order of Re-reference.

(Filed November 6, 1930.)

The above-stated cause having been duly referred to the Honorable John Bentley, formerly one of the Vice-Chancellors of this Court, and the same remaining unheard:

It is thereupon, on this 14th day of October A. D. nineteen hundred and twenty, ordered that said cause be now referred to the Honorable John O. Bigelow, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein; and that such hearing be had at the time and place already designated therefor.

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E. R. WALKER,
C. 40

Memorandum.

(Filed October 30, 1930.)

BIGELOW, V. C.:

10 This bill was filed to quiet the title of the complainant to lands in Fort Lee, Bergen County. In 1882 John Edward Hughes purchased the premises in question at sheriff's sale. In December, 1891, he rented the premises to the complainant, who has since remained in possession. Hughes died in New York where he was a resident November 30, 1902. A year or so before his death he became insane and a committee was appointed for him in New York. Complainant claims title by adverse possession.

20 The bill names as defendants in general terms the heirs, devisees, etc. of Hughes and certain alleged heirs by name. None of the defendants answered, except Mattie Beere Haworth widow of Percy Beere and their daughter Margaret Beere. They assert that Percy Beere was the sole heir of John Edward Hughes and through him they claim title to the premises. Mrs. Paula B. Smythe, as administratrix of her late husband, George A. Smythe, appeared during the hearing and upon
30 her petition was admitted as party defendant. She claimed an interest in the premises under assignment to her husband by sundry alleged heirs of Hughes and was given leave formally to set forth her claim in an answer. This she has not yet done.

40 Mr. Hughes died intestate. He left no widow or children, or brothers or sisters, or father or mother. He does not appear to have been in communication with any of his kindred for several years prior to his death or to have had friends who knew who were his relations. His personal estate was taken in charge by the public administrator in New York

Memorandum.

and was then subject of litigation between various claimants for many years. It has finally been proved that his nearest of kin at the time of his death were an uncle, Percy Beere already mentioned, and several cousins scattered throughout the world. Mr. Beere was living in St. Louis in 1902 and died there October 4, 1904, intestate, leaving his wife the defendant Mattie Haworth and his daughter the defendant Margaret Beere, an infant then three months old, as his only heirs at law. There is mention in the proofs of two maternal aunts of Mr. Hughes, Martha and Maria Beere who emigrated to Australia from Ireland prior to 1850 and who do not seem to have been since heard from. The presumption is that they predeceased Mr. Hughes.

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The descent of the title to this property is covered by section six of "An Act Directing the Descent of Real Estate," as amended by P. L. 1894 page 209. By this act the uncle Percy Beere took title to the premises to the exclusion of his nieces and nephews, the cousins of Mr. Hughes. *Schenk v. Vail*, 24 N. J. Eq. 538. *Bailey v. Röss*, 32 N. J. Eq. 544.

Mrs. Smythe proved assignments to her husband from a number of the alleged heirs, but not from Percy Beere or the defendants Mrs. Haworth or Miss Beere. In her argument she speaks of a lost assignment executed by them, but she has not proved that such an assignment was ever made. Her claim, therefore, is not established.

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The title of the complainant requires more extended consideration. He paid rent of \$8 a month to Mr. Hughes and later to his committee until the death of Mr. Hughes and indeed for some months thereafter until he heard of the death. In absence

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Memorandum.

of proof to the contrary he is presumed to have been a tenant from year to year during the lifetime of Mr. Hughes. By remaining in possession of the premises after the death of Mr. Hughes he became by operation of law the tenant of Mr. Beere and this tenancy is presumed to have continued until some action was taken to terminate it. 35 C. J. 967. He never gave notice of his intention to quit and never received notice from the landlord. Probably he never heard of Mr. Beere until after the latter's death and so far as appears, Mr. Beere never knew of Mr. Dobbelaar's existence. Complainant apparently stopped paying rent merely because he did not know whom to pay and because no one demanded the rent who had authority to do so. The following passage from examination of the complainant is significant:

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"Q. Now, has anyone ever claimed this property—tried to get this property away from you? A. Why, Smythe came there and said he had found some heirs, and he told me a lot of stuff, and I considered it a kind of ghost story. Q. Well, what did you do? A. I couldn't say anything to him. I thought that thing would come up before the court eventually and I couldn't go to work—if someone came along and said, 'Why, I own this' or 'I am related' or something of that kind—I couldn't go by anything of that kind. Q. Mr. Dobbelaar, did anyone else come to see you about this property? A. Edmond Hughes came from Hamburg. Q. Who did he say he was? A. He said he was a half brother. Q. What did he say to you? A. Well, he wanted to sell it to me. Q. What did you do? A. Well, I didn't give him any satisfaction. I don't remember how it ended. Q. Now, did anyone else see you about it? A. No, I don't remember anybody else."

Memorandum.

The date that Mr. Smythe called on complainant does not appear. John Edmond Hughes went to see him about 1907. In 1915 Mrs. Haworth and Miss Beere began an action of ejectment in the New Jersey Supreme Court against complainant. He answered with a general denial of the complaint and without setting forth his own title. The action was dismissed in 1926 for lack of prosecution.

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Complainant testified as follows: "Well, we (complainant and Mr. Hughes) were talking on and off about my buying the place and his selling it to me, and then I commenced to think about moving, and then he didn't like the idea of moving without giving him three or six months' notice, and then he came over afterwards, and he says, 'I could have sold the place, but I want you to have it,' and that that was the last I saw of him. And then he got sick, and then I heard afterwards that he was dead." Complainant further testified that after this conversation he continued to pay rent, but that after Mr. Hughes's death he considered that he, complainant, owned the property and that his title sprung from the conversation above quoted. This secret attitude on the part of the complainant was insufficient to make his possession adverse to the title of his landlord. *Leport v. Todd*, 32 N. J. L. 124; *N. J. Title, etc., Co. v. Bowyer*, 98 A. 838. He did nothing and said nothing which might constitute notice to his neighbors or to the world at large, or to the true owners of the property, that he claimed ownership or the right to possession by any title other than that of tenant. I find that the statute of limitations did not begin to run in complainant's favor until, at earliest, October 4, 1904, the date of the death of Percy C.

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Final Decree.

Beere. On that date title descended to the infant Margaret Beere and during her minority, the statute did not run as against her.

10 The claim of the complainant cannot be sustained. There should be a decree establishing the title of the defendant Miss Beere subject to the dower of her mother.

These defendants have filed a counter-claim for an accounting by the complainant for the value of his use and occupancy of the premises. Their laches debar them from this relief if they are otherwise entitled to it. The counter-claim should be dismissed.

20 **Final Decree.**

(Filed November 17, 1930.)

30 This cause coming on to be heard in the presence of Ryland E. Lippincott, Esq., representing Seufert and Elmore, solicitors of the complainant; and Frank W. Heilenday, solicitor of the defendants Mattie Beere Haworth and Margaret Beere; and Paula B. Smythe as administratrix of the estate of George A. Smythe, deceased, *pro se*; and the court having read the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon;

And it appearing that the complainant had entered into possession of the lands and premises described in the bill of complaint herein as tenant of John E. Hughes, and so continued until the death of the said John E. Hughes;

40 And it appearing that the complainant set up and relied on certain claims to and estates and in-

Final Decree.

terests in the lands and premises described in the bill of complaint in this cause;

And it further appearing that the claim of the said complainant in and to the said lands and premises, which he claims and insisted upon as aforesaid, is not valid, and that the said complainant has not any such estate or interest therein as was so by him claimed or set up in this cause; and no further claim being set up by said complainant, or now appearing, and it appearing that the complainant is not entitled to the relief prayed for in his bill, and that his bill of complaint should be dismissed. 10

And it further appearing that John E. Hughes died on November 30, 1902, intestate, seized of said lands and premises, leaving him surviving as his only heir at law and next of kin, his uncle Percy C. Beere; and that upon the death of the said John E. Hughes as aforesaid, the title to the said lands and premises descended to and vested in the said Percy C. Beere; that the said Percy C. Beere died intestate October 4, 1904, leaving his widow Mattie and his daughter Margaret Beere, his only heir at law; that upon the death of the said Percy C. Beere as aforesaid, title to the said lands and premises descended to and vested in his daughter Margaret Beere, subject to the right of dower of her mother Mattie Beere, who subsequently remarried and is now the defendant Mattie Beere Haworth; that the said Margaret Beere is now the owner in fee simple of the lands and premises described in the bill of complaint, subject to the right of dower of her mother, the said Mattie Beere Haworth; and that the said defendants Margaret Beere and Mattie Beere Ha- 20 30 40

Final Decree.

worth are entitled to a decree herein establishing their title to said premises as aforesaid;

10 AND it further appearing that none of the other defendants has any estate or interest in or encumbrance upon said lands and premises, or any part thereof;

And it further appearing that the defendants Mattie Beere Haworth and Margaret Beere are not entitled to recover on their counterclaim for an accounting by the complainant for the value of his use and occupation of said premises;

It is, on this day of November, 1930,

20 ORDERED, ADJUDGED AND DECREED that the said complainant, Lawrence Dobbelaar, has no estate or interest in or encumbrance upon said lands and premises, or any part thereof; and that his said bill of complaint be, and the same is hereby dismissed.

It is further ORDERED, ADJUDGED AND DECREED that as to all of the said lands and premises described in the said bill of complaint, which lands and premises are described as follows:

30 All those certain lots, tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Fort Lee, in the County of Bergen, in the State of New Jersey, and which on a map entitled "Map of Pond Park situate at Fort Lee Village, Town of Hackensack, Bergen County, New Jersey," filed in the office of the Clerk of Bergen County,
40 April 7, 1864, are known as lots numbered 9, 10 and 11 fronting on a road leading from Fort Lee Turnpike Road to Bulls Ferry and

Final Decree.

lots numbered 32, 33 and 34 fronting on Elizabeth Street at the corner of Parker Avenue as laid down on said map.

Being the secondly described parcel of land and premises conveyed by a certain deed made by Isaac Hopper, Sheriff of the County of Bergen to John Edward Hughes, dated March 6, 1882, recorded March 10, 1882, in the office of the Clerk of the County of Bergen in Liber C-11 of Deeds for the County of Bergen on page 311.

10

Being also the same premises conveyed by Franklin Wight and Mary E., his wife, to Daniel O'Connell, by deed dated June 25, 1864, recorded July 17, 1864, in the office of the Clerk of the County of Bergen in Book X-5 of Deeds for said County on page 62.

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so far as relates to any claim thereon by or on behalf of the complainant or of any of the defendants herein except Margaret Beere and Mattie Beere Haworth, title of the said defendant Margaret Beere in and to the same and every part thereof is hereby determined, fixed and settled, and declared to be good, and that she is seized of said premises in fee simple, subject only to the right of dower of the defendant Mattie Beere Haworth in and to said lands and premises.

30

It is further ORDERED that the counterclaim of the defendants Margaret Beere and Mattie Beere Haworth against the complainant for an accounting for the value of his use and occupation of said premises, be, and the same is hereby dismissed.

E. R. WALKER,

C.

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Respectfully advised,
JOHN O. BIGELOW.

Testimony.

Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Thursday, May 9, 1929, at 10 o'clock in the forenoon before his Honor JOHN BENTLEY, Vice-Chancellor.

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LAWRENCE DOBBELAAR, the complainant, sworn in his own behalf, testified as follows:

Direct examination by Mr. Lippincott:

Q. Mr. Dobbelaar, you are the complainant in this suit? A. Yes.

Q. Where do you reside? A. I reside in Fort Lee.

20

Q. Whereabouts in Fort Lee? A. Well, it is between Palisade and Parker Avenues, about 100 feet south of Main Street.

Q. On the property described in the bill of complaint?

Mr. Heilenday: I object to that as described in the bill of complaint.

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Mr. Lippincott: This property is described exactly in the bill of complaint and answer of the defendants as in the deed. The bill sets forth a detailed description as shown in a deed to John Edward Hughes, and in paragraph 1 of the defendants' answer they admit it. Now, if I am compelled to produce my deed under such circumstances as that I would be very much surprised and would ask an opportunity to serve notice to admit it.

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The Court: As I understand it, your question is now directed as to whether or not the

Lawrence Dobbelaar, direct.

has complainant resides on the land described in that section.

Mr. Lippincott: Yes, sir.

The Court: Don't you allege in the first paragraphs of the bill that he lives there?

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Mr. Lippincott: Yes, but they say they have no knowledge or information sufficient to form a belief as to the use of the premises.

The Court: It isn't a question whether he went in but where he now resides. It seems to me your allegation of occupation of the land in question is in the 4th paragraph of the bill, and that is denied in the answer.

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Mr. Lippincott: But going on to the counterclaim of the defendants, they say that he has been in possession since October 4, 1904.

The Court: Yes, my attention wasn't called to that.

Mr. Lippincott: They say:

From October 4, 1904, the complainant has been in possession of the lands and premises described in the bill of complaint, and has received and appropriated to his own use the rents, issues and profits of said land and premises, and has had the use and occupation of a portion of the said land and premises without paying any rent therefor to the defendants.

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The Court: Well, why don't you admit that, Mr. Heilenday?

Mr. Heilenday: In the first place, we say he has only had the use and occupation of said land and premises.

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Lawrence Dobbelaar, direct.

The Court: Oh yes, you do say use and occupation since 1904.

Mr. Heilenday: I think he ought to be put right on his proof as to that.

10 Mr. Lippincott: In that case, inasmuch as the defendants have asked the courtesy of this court to take testimony I will ask the the same privilege to produce by proper testimony that these are the actual premises in question.

Q. Now, Mr. Dobbelaar, when did you move into these premises? A. About 1891.

Q. Did you rent the premises? A. I did.

Q. From whom? A. From John E. Hughes.

20 Q. How much rent did you pay for them? A. \$7.

Q. And for how long did you pay \$7? A. I don't know; not very long. And then I paid \$8.

Q. How long had you known Mr. Hughes? A. Oh, I knew Mr. Hughes about 10 years.

Q. Before he died? A. Before he died.

By the Court:

Q. When did you rent it first? A. In 1891.

30 *By Mr. Lippincott:*

Q. Have you resided on the same premises that you went into in 1891 ever since? A. Ever since.

Q. During the time Mr. Hughes was alive did you negotiate for the purchase of this property? A. Well, we were talking about it.

40 Q. Will you tell the court the circumstances. A. Well, we were talking on and off about my buying the place and his selling it to me, and then I commenced to think about moving, and then he didn't like the idea of moving without giving him three or six months' notice, and then he came over after-

Lawrence Dobbelaar, direct.

wards, and he says "I could have sold the place, but I want you to have it", and that was the last I saw of him. And then he got sick, and then I heard afterwards that he was dead.

Q. When, Mr. Dobbelaar, was the last time you paid any rent? A. It was in 1903. 10

Q. When? Have you any idea? A. It was in 1902. Mr. Williamson was appointed guardian and he notified me and I went down there and paid the rent.

Q. Did you understand that Mr. Hughes was in the insane asylum at the time he died? A. Well, I heard about that. I didn't know it myself; I heard about that. I went down there to see a party that had an office there and he was with him. He was a watchman. 20

Q. Did you ever receive a notice from a man by the name of James T. Williamson, saying to you that he had been appointed a committee of the estate and person of John E. Hughes? A. Yes.

Q. Directing you to pay the money to him? A. Yes.

Q. Did you pay it to him thereafter? A. Yes, I paid it to him.

Q. Now, when did you first hear, as near as you can recall, that Mr. Hughes was dead? A. Why, it wasn't very long after that. You see, it is so long ago I don't remember. That was sometime late in 1902 or early 1903. I couldn't say exactly. 30

Q. And do you remember whether you were ever notified by anybody to pay any rent after that? A. I don't know of anyone.

Q. If you had been notified would you have paid it? A. I would not.

Mr. Heilenday: I object to that. 40

The Court: What is the purpose?

Lawrence Dobbelaar, direct.

Mr. Lippincott: To establish a state of mind under the cases. As soon as he discovered Hughes was dead he thought he owned the property.

10 The Court: Well, there is no jury here. I will allow the answer to stand and deal with it when I come to decide the case.

Q. Why, Mr. Dobbelaar?

The Court: Why wouldn't you have paid it?

A. Because I was under the impression that it belonged to me, since he told me he wanted me to have it.

20 Q. Now, has anyone ever claimed this property—tried to get this property away from you? A. Why, Smythe came there and said he had found some heirs, and he told me a lot of stuff, and I considered it a kind of ghost story.

30 Q. Well, what did you do? A. I couldn't say anything to him. I thought that thing would come up before the court eventually and I couldn't go to work—if someone came along and said, "Why, I own this" or "I am related" or something of that kind—I couldn't go by anything of that kind.

Q. Mr. Dobbelaar, did anyone else come to see you about this property? A. Edmond Hughes came from Hamburg.

Q. Who did he say he was? A. He said he was a half brother.

Q. What did he say to you? A. Well, he wanted to sell it to me.

Q. What did you do? A. Well, I didn't give him any satisfaction. I don't remember how it ended.

40 Q. Now, did anyone else see you about it? A. No, I don't remember anybody else.

Lawrence Dobbelaar, cross.

Q. Did the sheriff of Bergen County ever serve you with papers? A. Oh yes, the sheriff came there and served the papers, and I took them up to you and Mr. Seufert.

Q. Now, during all this time since Mr. Hughes' death, you have claimed to own this property? A. I certainly did. 10

Q. And you have resided on that property since 1891? A. Yes. We were very good friends, Mr. Hughes and I.

Cross examination by Mr. Heilenday:

Q. You went into possession as a tenant of Mr. Hughes? A. Yes.

Q. And you continued to pay rent? A. I paid rent. 20

Q. Until Mr. Hughes died? A. Until he died.

Q. And then a committee was appointed?

Mr. Lippincott: I object to that.

Q. You continued to pay your rent and occupy the premises just the same after Mr. Hughes was insane as before? A. Well, I paid it to Mr. Williamson.

Q. That is the only difference between the way you occupied the premises during the time Mr. Hughes had been there and was sane and the time after he became insane? A. Yes. 30

Q. And you continued to do that— A. Until he died.

Q. And after Mr. Hughes died you remained there the same way as before? A. Yes.

Q. The only difference was you didn't pay any rent? A. No.

Q. That is the only difference? A. Except I thought I was entitled to the place. 40

Lawrence Dobbelaar, cross.

Q. Do you mean that he wanted you to have the place for nothing? A. He says, "I want you to have it".

10 Q. But just at that time, you testified that you had been talking about the purchase of the property. A. That was before. When he got insane, of course that altered the whole case. If the man had got well again, I didn't expect he was going to give it to me for nothing.

Q. You didn't expect to get this property by thievery or anything of that kind?

Mr. Lippincott: I object to that.

A. No, we had been too good friends.

20 Q. Did he designate the person to whom you should make payments? A. I don't know about that. The way I felt about it there was a question. When I heard about different heirs and things of that kind, why, I couldn't very well take any stock in that.

Q. You wanted these different heirs to establish their right in court; that is what you wanted? A. Well, it would have to come to that anyway, eventually.

30 Q. That is what you wanted done? A. Yes.

Q. When you said it was a ghost story you thought the whole thing would come up eventually in court? A. Yes, if he would have no good claim.

40 Q. And you were satisfied to take his claim to court and establish his right to the property, or if the court awarded the property to any person you would pay that or give them the property? A. Well, I don't know. The way I looked at it, you see, we were such good friends, and, of course, it is so long ago I can't recollect everything that passed between us; but at any rate, when he told

Lawrence Dobbelaar, cross.

me that he wanted me to have it I felt as though I would be doing wrong if I didn't go to work and claim it.

Q. What year did he tell you he wanted you to have it? A. Well, that was in 1902.

Q. What month in 1902? A. Well, I couldn't say exactly what month it was. 10

Q. Was it at the beginning or at the end of 1902? A. Well, it might have been around April.

Q. When he told you in April, 1902, that he wanted you to have it did you think you had it from that time on? A. Not until he died.

Q. I know, but from that particular time did you think that it was your property when he said what he did? A. I don't understand. 20

Q. In April, 1902, did you think it was your property, just after he said to you he wanted you to have this property? A. Yes, I told my wife it was almost as good as a will, but when he got sick—

Q. We are not going beyond that when he got sick, but in April, 1902, he said he wanted you to have this property did you consider this a gift of the property? A. Well, I thought it was almost as good as a will, or that I would have the property on some easy terms. 30

Q. You expected to pay for the property? A. You see, when the man got sick—if he hadn't gone insane—I think there would have been a different arrangement altogether.

Q. I am trying to confine your testimony now to April, 1902. He came to you and told you he was going to sell out the property to someone else and you were talking to him about moving and he thought he ought to have three months' or six months' notice, and he then said "Mr. Dobbelaar, I would like you to have this property"? A. He 40

Lawrence Dobbelaar, cross.

didn't say "I would like"; "I want you to have it."

Q. And then you said you would get it on favorable terms? A. Well, I didn't know at that time what to think about it.

10 Q. Now, when he said he wanted you to have it, you thought you were going to get it on favorable terms, didn't you? A. Well, I don't know.

Q. Was any price mentioned? A. I don't know if there was anything mentioned before in January or something of that kind he wrote me a letter.

Q. Was a price mentioned then? A. No, nothing at all of that kind.

Q. Did you expect to get the property for nothing or did you expect to pay for it, in 1902, when he told you you could have it? A. At that time? I don't remember.

Q. You don't say now that you didn't expect to get the property without paying for it, do you? A. I don't know, the way things came about when he used that language and when he died—

Q. He couldn't have used it when he died because you said he told you that in April and he died in November? A. I ain't sure.

30 Q. Now, let us get back to April and stay there until you finish April: He told you, "I want you to have this property" and when he said that you expected to pay him some money on favorable terms, didn't you? A. Well, it might be that way and might be the other way.

Q. The next day, immediately after that, you didn't consider you owned the property? A. Yes, I thought it was as good as mine.

40 Q. So that in April, or the next day, when he said he wanted you to have the property you thought you owned the property? A. Yes.

Lawrence Dobbelaar, cross.

Q. Did he give you a deed? A. He did not.

Q. So you thought the man was giving you the property without your paying anything for it? A. I thought there would be some kind of a settlement about it.

Q. If you thought you owned that property in 1902 why did you pay rent for it for May, June, July, August, September, October, and November, 1902? A. Well, I paid it as long as the man lived. 10

Q. Why, it was your property? A. Well, as long as he lived, I expected him to get better.

Q. So it was your property if he didn't get better and if he did get better it was your property; is that what you are trying to tell us now? A. Well, I don't know what arrangement he would make. 20

Q. He wasn't sick at that time in 1902? A. He might have had a bad feeling or something, but he wasn't exactly right.

Q. Now, you did pay rent until November, 1902, didn't you? A. I believe so.

Q. Your petition says you continued to pay rent until November, 1902. A. Yes.

Q. Now, did anyone demand rent from you since November, 1902? A. No, sir.

Q. And that is the reason you didn't pay rent? A. I wouldn't pay it anyway. 30

Q. Why not? A. The man was taken sick.

Q. What difference did that make? A. I thought after the man died he wanted me to have it, and I know very well if that man could be brought to life today he would tell you the same thing.

Q. You thought after he died you wouldn't have to pay rent to anybody? A. He said he wanted me to have it. 40

Lawrence Dobbelaar, cross.

Q. Did he have a will? A. I would have gotten that if he hadn't died.

Q. So that you knew that you couldn't get this property except by deed or will; is that right? A. I knew it would be decided by the court later on.

10 Q. Didn't you say you would have got it if he hadn't died? A. Sure.

Q. You knew it was necessary, in order to get this property, it would have to be by a deed or will? A. Afterwards I knew very well about it.

Q. That you could only get it by deed or will? A. Yes.

Q. And you think if Mr. Hughes hadn't died you would have had the property by deed or will? A. I wasn't under any obligations.

20 Q. I say, if he hadn't died you think you would have obtained from him either a deed of the property or he would have given it to you by will? A. Yes, I think I would have either gotten it by deed or will.

Q. You made an affidavit in this case, Mr. Dobbelaar? You made an affidavit when this suit was started, didn't you? That is your signature, isn't it (exhibiting to the witness his signature in the bill of complaint)? A. Yes.

30 Q. You swore to that on the 1st day of March, 1927, before Jeanie E. Stephen, a notary public; that's right, isn't it? A. Yes.

Q. And this affidavit was attached to your bill of complaint in this case? (Showing witness paper again.) This is the complaint in your case and you made this affidavit so that you could attach it to the bill of complaint? A. Yes.

40 Q. Why didn't you say something in this affidavit about Mr. Hughes giving you this property in 1902? A. (Witness pauses.)

Lawrence Dobbelaar, cross.

Q. Why didn't you say in 1902 that Mr. Hughes had given you this property? A. Well, I say he wanted me to have it.

Q. Why didn't you tell that to your counsel who prepared that affidavit and have it put right in the affidavit?

10

Mr. Lippincott: I object, if your Honor please. It makes no difference, as a matter of fact, what the circumstances were under which he was to take the property. He might have been a mere squatter and held the property against the world. It is unimportant as to what his thoughts were. That affidavit was prepared by me on the facts given to me. It seems to me improper on this cross examination to go into that.

20

The Court: Your objection, Mr. Lippincott, is that you strenuously insist upon your right to limit the cross examination?

Mr. Lippincott: No, I'm not objecting wholly on that ground; I am objecting on the ground that it is immaterial. I don't care how far they go into it because we have nothing to conceal, but I want it put in such shape that a gentleman of his age can understand.

30

The Court (addressing the witness): If the lawyer asks you anything that you don't understand, just say so. Do you understand, the question?

A. Yes.

Q. Now, I will reframe the question and ask you again: You say the reason you didn't pay rent was that Mr. Hughes said to you in 1902 "I want

40

Lawrence Dobbelaar, cross.

you to have this property" and you thought it was your property; is that right? A. Yes.

10 Q. Why didn't you put in this affidavit that in April, 1902, Mr. Hughes told you that and you thought it was your property and you continued in possession believing it to be your property? Why didn't you tell that to the counsel preparing this affidavit? A. I don't know why I didn't tell him that.

Q. Isn't that a very important element in your case?

Mr. Lippincott: I object. That is a question of law.

20 Q. Well, to your mind isn't that an important thing in your case? A. I don't know.

Q. You did tell him that in 1904, several people the names of whom you have forgotten, called at your residence claiming to be the heirs of the said John Edward Hughes, and that you disputed their claim and refused to deliver possession of the property? A. Yes.

30 Q. Why didn't you tell him that Mr. Hughes had given you this property in 1902 and it was your property? A. I didn't think it was necessary to tell those people, strangers to me. I didn't have anything to show that that occurred.

Q. Now, they claimed to be the heirs of John Edward Hughes? A. Yes.

Q. And you disputed that, didn't you? A. That is what you say.

Q. You say in your affidavit that you disputed their claim and refused to deliver possession of said premises. A. I didn't think they were what they claimed to be.

40 Q. And that is the reason you refused to deliver

Lawrence Dobbelaar, cross.

possession at that time was because you thought they weren't the heirs of John Edward Hughes?

A. I don't know.

Q. But don't you say here in this affidavit "I disputed their claim and refused to deliver possession of said premises? A. Sure.

10

Q. So that the thing that made you refuse to deliver possession was you disputed their claim to being the heirs; is that right?

The Court: I don't think that is what he meant. What he meant was he disputed their claim to this particular property.

Mr. Heilenday: He says here: "Claiming to be the heirs of John Edward Hughes. I disputed their claim and refused to deliver possession of said premises."

20

Mr. Lippincott: That is a matter of intention. He refused to give up possession.

The Court: It is cross examination; I will allow it.

Q. In this affidavit you said that these people claimed to be the heirs of John Edward Hughes; you disputed their claim and refused to give them their property. That is right now, isn't it? A. I didn't want to bother with them at all. That is the reason I went to Mr. Seufert at that time. He was the judge then.

30

Q. Why didn't you say in this affidavit that you claimed the property if you did claim it? A. (Witness pauses.)

Q. You didn't claim the property in 1904 at all, did you?

Mr. Lippincott: I object to that. He has made a definite assertion that he didn't, and I ask your Honor to pass upon that.

40

Lawrence Dobbelaar, cross.

Mr. Heilenday: He came into court asserting his claim and I have got to do what I can to meet it.

Mr. Lippincott: You certainly can do it in a proper manner.

10 The Court: I can't control the defendant's counsel in his cross examination. This man is a party to the proceeding.

Mr. Lippincott: He made a definite assertion that he didn't do it.

The Court: And then he said he did.

Q. You did not claim the property in 1904, did you? A. Well, I thought I owned it. I didn't go and tell everybody about it.

20 Q. You didn't tell anybody you thought you owned it, but you thought in your own mind you owned it? A. Yes, I thought from what he said that I owned it.

Q. You said you didn't tell anybody about it?

A. No, I wouldn't. I didn't have any business to talk with anybody about it.

Q. Well, here was the business to talk about it when these people came to see you in 1904 and said they were the heirs of John Edward Hughes; you certainly had an opportunity to talk with them about it? A. How did I know they were the heirs?

Q. And that is the reason you didn't tell them?

A. I didn't tell them anything. I didn't know who they were.

Q. Now, you testified in 1907 Edmond Hughes came to your house and demanded that you deliver possession of the property or purchase it, and you refused to do it; that's right, isn't it? A. Yes.

40 Q. Did you tell Edmond Hughes anything about this story about the decedent, John Edward

Lawrence Dobbelaar, cross.

Hughes, having given you this property in 1902?

A. No, I didn't.

Q. And at that time you wanted Edmond Hughes to establish his right to the property as an heir of John Edward Hughes? A. I didn't want him to do anything but let it go.

10

Q. Now, in 1915, when Mattie Beere, the woman whom I represent, brought you in the Supreme Court did you at that time tell your lawyer or anybody else that in 1902 John E. Hughes had given you the property? A. I don't remember telling anybody that.

Q. Well, as a matter of fact, isn't this the first time that you told anybody about this story about John E. Hughes giving you the property in 1902, when you told it on the witness-stand today? A. I may have told some of my friends.

20

Q. Do you know the names of any of them? A. Mr. Thomas McNally.

Q. When did you tell him? A. I told him some-time ago when I was coming down here to the trial.

Q. That was on November 7th, the last time this case was down for hearing? A. Yes. I asked him if he would go down with me and, if I remember right, I told him how it was.

30

Q. That was November 7th, 1928, the time the case was on the calendar before; is that right? A. What is that?

Q. When you told Mr. McNally of this story about Mr. Hughes wanting you to have the property it was in November, 1928, the day the case was set down for hearing before? A. Something like that.

Q. When Edmond Hughes came to you in 1907, if he had established his right as an heir of John

40

Lawrence Dobbelaar, cross.

Edward Hughes, you would have paid rent to him, wouldn't you?

10 Mr. Lippincott: I object to that. This is a question that relates to 20 years ago. It is purely a legal proposition.

The Court: But the statute had begun to run and hadn't expired in 1907.

Mr. Lippincott: That is a question of law, not of fact. If Mr. Edmond Hughes in 1907 had established his right to the property Mr. Dobbelaar would have had to get out; but he didn't do so.

Mr. Heilenday: We can certainly find out about his possession.

20 The Court: You have got to show not only possession but open and adverse possession.

Mr. Lippincott: I withdraw the objection.

The Court (Addressing the witness): The question was, if somebody had proved his right to the property in 1907 would you have paid the rent to him?

A. I don't think so.

30 Q. Why not? A. Because I thought I was right, but if it was proved that I was wrong I would very likely have paid it and put up with it.

Q. You would have vacated the property? A. Yes.

Q. So that the reason you didn't deliver up possession to Mr. Hughes in 1907 was because you wanted him to prove that he was one of the heirs of John Edward Hughes; is that right? A. (The witness pauses.)

40 The Court: Ask it this way: When this younger Hughes made his demand in 1907

Lawrence Dobbelaar, cross.

did you believe that he was an heir of John Edward Hughes.

A. I did not.

Q. And you wanted him to prove that fact? A. Well, I didn't know but what he had to do something of that kind. 10

Q. And if he had proved he was the heir of John Edward Hughes would you have delivered up possession of the property to him? A. I suppose if he had proved it I would have either had to pay him rent or get out.

Q. I say, if he had proved to your satisfaction that he was the heir of John Edward Hughes in 1907 you would have delivered over the property to him? A. I don't know about that. I think I would have told him of the arrangement with Mr. John E. Hughes; being personally acquainted with him and he was my friend, and he having told me he wanted me to have the property—I would have told him about that. 20

Q. But you didn't say anything about that? A. I did not.

Q. Why didn't you tell him about it? A. Because I didn't think he had anything to do with it.

Q. But you just told me if he had proved to your satisfaction that he was the heir of John E. Hughes you would have delivered up possession, notwithstanding this arrangement. A. I thought he was a faker and I didn't bother with him. 30

Q. Why didn't you say to him, "I don't care whether you are the heir or not, I have got an arrangement with John E. Hughes that I would have the property"? A. I didn't want to get into any argument like that.

Q. In 1904 when these other people came to as- 40

Lawrence Dobbelaar, cross.

sert their rights as heirs you didn't pay any attention to them? A. No.

Q. And you wanted them to prove that they were the heirs of John E. Hughes? A. I felt the same way about them.

10 Q. If they had proved that they were the heirs would you have paid rent to them, or gotten out, or what would you have done? A. Very likely I would have gotten out.

Q. In 1915 when Mattie Beere alleged that she was the heir of John E. Hughes, if she had proved that she was an heir would you have paid rent to her or gotten out?

20 Mr. Lippincott: I object to this. If suit were properly brought and the matter adjudicated it is ridiculous to ask him what he would do. He would have probably obeyed the decree of the court or have been in contempt of court. His question is, if she had proved herself to be an heir would he have paid rent or gotten out.

Mr. Heilenday: I am talking about if she was an heir; I am not talking about if she brought suit.

30 Mr. Lippincott: She never appeared here except by counsel.

The Court: Counsel is cross examining and wishes to know his state of mind, whether if she convinced him out of court.

40 Q. Now, if Mattie Beere and her daughter Margaret Beere, people whom we represent, had convinced you, either personally or by agents, that Mattie Beere and her daughter Margaret Beere were the sole heirs, would you have paid the rent to them or would you have vacated the property,

Albert Dobbelaar, direct.

or what would you have done? A. Well, I would certainly have gotten out before I would pay rent, because I would have appealed to the court.

Redirect examination by Mr. Lippincott:

Q. How old are you? A. I was born in 1851; I am now in my 78th year. 10

Q. And is there any way in which you could be convinced that nobody else owned this property except you, except by a court order? A. That was my idea.

Q. That is all.

ALBERT DOBBELAAR, sworn on behalf of the complainant, testified as follows: 20

Direct examination by Mr. Lippincott:

Q. Are you a son of Lawrence Dobbelaar? A. I am.

Q. Where do you live now? A. I live in Bergenfield.

Q. Bergen County, New Jersey? A. Yes.

Q. How long have you lived there? A. In June it will be one year. 30

Q. And prior to that time where did you live? A. I used to room in Astoria, Long Island; I lived there about a year. I got married and lived in Astoria, Long Island, and before that I lived home.

Q. When were you married? A. Three years ago.

Q. And during all the time before you got married you lived in your home in Fort Lee? A. Yes, with my father.

Q. Where is that property situated? A. Be- 40

Charles Dobbelaar, direct.

tween Parker and Palisade Avenue, Fort Lee, Bergen County—

The Court: On what street?

10 A. Parker Avenue near Main Street, about 100 feet south of Main Street.

Q. Since you can remember, has your father lived anywhere else except where he is living now?

A. No.

Cross examination by Mr. Heilenday:

Q. How old are you, Mr. Dobbelaar? A. I will be 41 in September; I was born in 1888.

Q. You are 39 now? A. I am 40 now; born in 1888.

20

CHARLES DOBBELAAR, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lippincott:

Q. You are the son of Mr. Lawrence Dobbelaar? A. Yes.

Q. How old are you? A. I will be 50 in July.

30 Q. Where do you reside? A. Between Palisade and Parker Avenue.

Q. With your father? A. Yes.

Q. And do you reside in the same premises you did in 1900? A. Yes.

Q. And did your father reside there? A. Yes.

Q. Has your father resided in the same premises since 1900? A. He has.

Q. Do you remember John E. Hughes? A. Yes.

Q. The man that your father rented the house from? A. Yes.

40 Q. Did you ever see him in your father's house?

A. I saw him; yes, sir.

Charles Dobbelaar, cross.

Q. Did he ever talk to you? A. Yes.

Q. Will you tell the court what conversation you had with Mr. Hughes and when it was, approximately. A. Why, they were having a lot of alterations made up there at the place and he came up there to look it over and I guess he was about an hour or so up there talking about different things, —speaking about the town and so forth, and he wanted to know how he was going to get back. At that time they had the trolley cars and he was kind of confused and he asked his way out of the property; and then he spoke to me in a sort of confidential way. He said “I have an offer for this property and I don’t want to sell it; I want your father to have it”.

10

Q. Do you remember when this was, Mr. Dobbelaar? A. I think that was in the spring of the year.

20

Q. And do you remember whether you ever saw Mr. Hughes after that or not? A. No.

Q. You didn’t see him after that? A. No, because later on he was sick.

Cross examination by Mr. Heilenday:

Q. What year was that? A. That was in 1902.

30

Q. How do you happen to remember the year 1902? A. Why, that was the year that he was sick.

Q. I know, but what fixes it in your mind as 1902 rather than 1903 or 1904? A. Why, according to the way he had this work done and I know that that happened to be the year that the work was being done and also that he was sick.

Q. Well, that was 27 years ago; what impresses your mind that it was 1902, that is what I am trying to find out? A. Well, the peculiar thing of

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Charles Killinger, direct.

him dying at that time and his sickness; that is the only reason that I know the date.

Q. Who was present at the time of this conversation? A. Why, nobody but myself. At that time I was just escorting him out of the yard.

10 Q. Your father wasn't there? A. He wasn't there at that particular time. I think he was probably off to business.

Q. And did you expect that he would give your father this property for nothing?

Mr. Lippincott: I object to that.

A. That I don't know. I don't know what was on his mind only from what he said. I don't know what he had in his mind when he said it.

20 *By the Court:*

Q. How old are you? A. I am 50 years.

Q. About how old a man was Mr. Hughes at that time? A. I think Mr. Hughes must have been around 50. I may not be a very good judge of ages, but I imagine he was around that.

30 CHARLES KILLINGER, sworn on behalf of the complainant, testified as follows:

Q. Mr. Killinger, where do you live? A. Fort Lee.

Q. How long have you lived there? A. 57 years.

Q. You are 57?

The Court: 57 years he has lived there.

Q. You have lived at Fort Lee 57 years? A. Yes.

Q. How long have you known Mr. Dobbelaar? A. 41 years.

40 Q. Does he belong to the same fire company with you? A. Yes.

Lawrence Dobbelaar, direct-cross.

Q. And he has all that time? A. Yes, sir.

Q. Do you know where he lives now, in Fort Lee? A. Yes, sir.

Q. Is that near the fire-house? A. Yes.

Q. Where is it? A. Right in back of the fire-house. 10

Q. Do you know how long he has lived there?

A. Well, it is about 35 or 40 years anyway; as long as I have known him.

Q. Never has lived anywhere else since you have known him? A. No, sir. I lived in New York one year.

Q. No, I say he has always lived there in the same place ever since you have known him? A. Yes, sir. 20

No Cross Examination.

LAWRENCE DOBBELAAR, recalled in his own behalf, testified as follows:

Direct examination by Mr. Lippincott:

Q. Mr. Dobbelaar, ever since Mr. Hughes died have you done all the repair work and kept the house in good condition? A. Yes, sir. 30

Q. Paid all the taxes? A. All the taxes and assessments, and had the foundation fixed, and put on new roof, and fixed the house; it was all bent over.

Cross examination by Mr. Heilenday:

Q. Did you receive any rents from the property? A. No, sir, never got any rents; I occupied it myself.

Q. What is it, a one-family house? A. It is the oldest house in Fort Lee. 40

Lawrence Dobbelaar, redirect-recross.

Q. I say, is it a one-family house? A. That's all.

Q. Did you know anything about the family of John Hughes? A. I didn't know anything at all about him.

10 Q. You didn't know his mother, did you? A. Why, I heard of him having a mother there. She used to sit outside and he was fanning her when she was sick in the summertime.

Q. John Hughes' mother used to sit outside on the property? A. Yes.

Q. What was her name? A. I can't tell you.

Q. Was it Marguerite Hughes? A. I couldn't tell you.

Redirect examination by Mr. Lippincott:

20 Q. It was before you moved in? A. Yes, sir.

Recross examination by Mr. Lippincott:

Q. Did you know, at the time Mr. Hughes died, whether or not his mother was dead or living? A. Oh, his mother died before I came there.

30 Mr. Lippincott: We rest. I understand your Honor is going to set the time for taking the deposition in Connecticut on the other side.

THE DEFENSE.

Mr. Heilenday: I offer the deposition of Mrs. Mattie Beere Haworth.

(The same is admitted.)

The Court: So that I may better understand the defense, I think I had better take a recess for 10 minutes and read this deposition of Mrs. Haworth now.

(Recess for 10 minutes.)

40 Mr. Dwyer: Percy C. Beere, the father of Marguerite, served in the U. S. Army during

Case.

the Civil War and we have various documents from the War Department we wish to offer in evidence, for the purpose of connecting the father with John E. Hughes. We have, first a certificate from the Secretary of War, dated November 7, 1928, which contains certain recitals.

10

Mr. Lippincott: No objection.

(The same is marked Exhibit D-1.)

Mr. Dwyer: We next offer in evidence a photostat copy of a muster in the detachment of the U. S. Veterans stationed at Memphis, Tenn. March, 1864, issued by the War Department November 22, 1928.

Mr. Lippincott: No objection.

20

(The same is marked Exhibit D-2.)

Mr. Dwyer: We next offer photostat copy consisting of 37 pages of the record of the pension case of Percy C. Beere, issued by the Department of the Interior, Pension Department, November 1, 1928.

Mr. Lippincott: This is to show the connection with the Hughes family?

Mr. Dwyer: Shows the birth and marriage of his daughter.

30

Mr. Lippincott: This has no connection with the original owner of the property; it is merely for the purpose of establishing the birth of the defendant.

(Admitted and marked Exhibit D-3.)

Mr. Dwyer: We offer it for the purpose of showing that Percy C. Beere was of the same family, the mother of the decedent.

Mr. Lippincott: I consented to this on the strength of my adversary's statement that it wasn't in there. Now, this isn't the best

40

Henry R. Burghard, direct.

10 evidence that can be had and not of any connection of Percy C. Beere with John E. Hughes who was the original owner of the property, and if this be the fact I would like to have the privilege of examining it before it is admitted.

The Court: You may have that opportunity and I will hear you as to whether or not it should be admitted.

Mr. Dwyer: We next offer in evidence transcript of the record of the death of John E. Hughes, issued by the Department of Health of the City of New York.

(Admitted and marked Exhibit D-4.)

20

HENRY R. BURGHARD, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. Dwyer:

Q. Where do you reside, Mr. Burghard? A. Bergenfield, N. J.

Q. How long have you resided there? A. 38 years, I guess.

30 Q. Were you married? A. Yes.

Q. What was the maiden name of your wife?
A. You mean Alice?

Q. What is the maiden name of your wife? A. Well, that is a queer one. I have got my third wife. (Smiling.) Now, that is funny, ain't it? Now, my first wife was Alice.

Q. What is the name of your first wife? A. Alice Beere.

40 Q. Where did you marry her? A. In Hempstead, Long Island.

Henry R. Burghard, direct.

Q. When? A. Now, go a little slow on that. The 22nd day of February, 1877.

Q. And where did she live when you became acquainted with her? A. Well, I don't know what street it was in, but it was in one of the principal main streets of Hempstead, Long Island.

10

Q. Did he have any brothers? A. Yes.

Q. What were their names? A. Henry, John and Hector.

Q. Did he have any sisters? A. Alice, my wife, and Margaret and Ann.

Q. Were there any children of the marriage under Alice Beere? A. Yes.

Q. How many? A. One.

Q. What is the name of the child? A. Mary Elizabeth Burghard, born the 7th day of November, 1877.

20

Q. Is she married? A. Yes.

Q. What is the name of her husband? A. Henry D. Everson.

Q. Is she in court today? A. Yes.

Q. Is your wife, Alice Beere, dead? A. Yes.

Q. When did she die? A. She died on the 4th day of March, 1880, in her 23rd year, in Hackensack, N. J.

30

Q. Did you know either of the parents of your first wife? A. I knew her mother.

Q. What was her name? A. Now, you've got me; I don't recall. Maggie, I think; I'm not sure.

Q. Did you have any conversation with your wife, Alice Beere, about her relatives? A. We talked it over, naturally like any family would.

Q. What relatives did she mention—near relatives? A. Why, she mentioned the Hughes family. That is the principal one that I can now recall.

40

Q. What did she say about the Hughes family?

Henry R. Burghard, direct.

A. Well, there was a Captain John Hughes who was a cousin and an aunt Margaret Hughes.

Q. You say she was an aunt; did she marry him?

A. I think, if I recollect rightly, it was Alice's father's sister; I'm not positive about that.

10 Q. What do you say about Captain John Hughes?

A. The same as you talk in any family; that she had an uncle Captain John Hughes and she had an aunt that married this Captain John Hughes, and she had a cousin, but she never said anything about the half brother to this John Hughes. I never heard of him. She said nothing about that.

Q. Tell us more about John Hughes' cousin. Anything more she said about that? A. I believe he had something to do with the jewelry business and owned property over here in Fort Lee. I recall those things. Of course, this thing was dead to me years ago.

20

Q. That is what your wife, Alice Beere, said to you? A. Yes. Old Mother Beere, as we used to call her, married John Hughes instead of marrying me.

Q. These daughters of your wife,—are any of them living? A. Why, I heard recently that Henry was dead. I know that the three girls are dead; I heard of that; but what became of John and Hector I don't know. The last I heard of them was somewhere down around Rockaway, Long Island.

30

The Court: How many years ago did you hear about them last?

A. Why, I think my daughter spoke to me about it last, because I don't talk much about that family any more now. I know they had a little house on that street. I worked two doors away from the Beere home for a man by the name of Rhodes;

40

Henry R. Burghard, direct.

I made candy; and I got acquainted with my wife there, and, of course, being a Southern boy and roaming around and had no home and only a sister, I thought I would get married, and I married very young.

Q. Did your wife ever speak about any brother of her mother? A. Why, I don't recall that. 10

Q. Did she ever say anything about any brother of her father? A. I think she said something about some soldier or other.

Q. What was the name of her father? A. Her father's name was Hector Beere.

Q. Did she say anything else that you recall about any brother or sister of her father, other than what you have mentioned? A. I don't recall it, no. 20

Q. You say she did say something about a soldier? A. Yes.

Q. Can you tell us anything more about it? A. No, I can't.

By the Court:

Q. Can you remember his name? A. No, sir; I can not.

By Mr. Dwyer: 30

Q. Did your wife ever mention the name of Henry Beere? A. I don't know; I can't recall it.

Q. Or Percy Beere? A. No. I am inclined to think I did hear that name Percy, but I'm not positive about that. I kind o' think that I do, because the name of Percy Beere I recall hearing. Where it came from I don't know. I presume it came out of that family.

Q. Are you acquainted with any paternal cou- 40

Henry R. Burghard, cross.

sin of your wife Alice Beere; that is, the child of any brother or sister of her father? A. No.

Cross examination by Mr. Lippincott:

10 Q. You say that you lived two doors from John Beere's house? A. No, sir; I did not.

Q. What was it you said? A. I said I lived two doors away from Alice's mother's house.

Q. And you worked two doors from John Beere's house? A. No, sir; I didn't say anything of the kind. I said I worked two doors away from the Beere's home. That is where I got acquainted with my wife.

20 Q. When did your wife die—your first wife? A. I told you that once.

The Court: 1880, in March.

A. In March, 1880.

Q. As a matter of fact, you didn't remember anything about that until you got talking about this?

A. Is that so! I was in court once before for my daughter. Once before I was in court with my daughter about this same thing.

30 Q. When? A. Now, you got me; I can't tell you the date. There was a different lawyer that had the case; let's see, what was his name—

Q. McDermott & Enright?

The Court: Mr. Carpenter?

A. No, I don't think that was the name.

The Court: McDermott & Enright?

40 A. My daughter remembers the name; she'll give you the name of that man that used to have it, and then somebody else took it up. I was wondering when my daughter came here, what the devil

Mary Elizabeth Everson, direct.

he had been doing all these years that the thing hadn't been cleaned up, and thought it was very peculiar.

Q. That is all. A. Is that enough?

Q. Is this your daughter here (indicating a person in the audience)? A. Yes, Mary Elizabeth.

10

MARY ELIZABETH EVERSON, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. Dwyer:

Q. What is the name of your husband?

A. Harry B.

Q. Where do you reside? A. 39 South William Street, Bergenfield, N. J.

20

Q. This is your father who has just left the stand? A. Yes.

Q. What was the maiden name of your mother?

A. Alice Beere.

Q. You probably do not remember your mother?

A. I do not.

Q. Did you or did you not, as one of the next of kin, receive a share of the personal estate of John Hughes?

30

Mr. Lippincott: I object, if your Honor please. The court records show that.

Mr. Dwyer: All right, I will have the records here. (Counsel hands paper to Mr. Lippincott.)

Mr. Lippincott: This is only a certified copy of the record in New York.

Mr. Dwyer: It is admissible to show that we had jurisdiction over the personal estate. We don't say it is binding on your Honor, but it proves that this woman was

40

Paula B. Smythe, pro se.

found, by a court of competent jurisdiction, to be next of kin of John E. Hughes.

The Court: The trouble is, it doesn't comply with the Act of Congress.

10

Mr. Dwyer: I will ask your Honor's permission to put that in.

The Court: The hearing will not be closed today and you may do that.

20

Q. Are you the Mary E. Everson who was a party to this proceeding No. 9071-1924, in the Supreme court of the State of New York and County of New York, in the matter of the petition of Mattie Beere Haworth, administratrix *de bonis non* of the estate of Percy C. Beere, late of Marionville, Lawrence County, Missouri, deceased, for payment to her as such administratrix of the personal estate of John E. Hughes, late of the County of Kings, deceased? A. Yes.

Q. When were you born? A. Nov. 7, 1877.

Q. Your maiden name was Mary Elizabeth Burghard? A. Yes.

30

Transcript of the testimony taken in the above stated case, on final hearing, at the Chancery Chambers, in Jersey City, on October 14, 1930, before his Honor JOHN O. BIGELOW, Vice-Chancellor.

PAULA B. SMYTHE, *Pro Se.*

The Court: Miss Smythe, do you care to make a motion to be admitted in this case?

Mrs. Smythe: Yes, sir.

The Court: You can make it now. Have you a paper or petition to present?

40

Mrs. Smythe: The only request I have to make of the Court, is to be permitted to state my case in as few words as pos-

Paula B. Smythe, pro se.

sible. I can make my statement. This was a public administrator's case in King's County. Those authorities were unable to find any one heir and my late husband went to Ireland to collect documentary evidence there.

10

The Court: What did he find out?

Mrs. Smythe: The only thing that could be found was found by Mr. Smythe. I have there certified copies from the Surrogate's Court.

The Court: Any counsel to be heard on this matter?

Mr. Lippincott: I don't know, I have no objection.

20

Mr. Heilenday: I have no objections. We represent Margaret Beere and Mattie B. Haworth.

The Court (to Mrs. Smythe): You are ready to go ahead with your case? If you are admitted as a party, as you are asking to be, you will be bound by any judgment that is entered in the cause. You may like the judgment and you may not. If you do not become a party, there will be a chance you will not be bound and you may be able to litigate the matter when you have counsel and can work up your case. You understand what I mean—do you want to be a party?

30

Mrs. Smythe: Yes, sir.

The Court: Where do you live?

Mrs. Smythe: 974 St. Nicholas Avenue, New York City.

The Court: You claim as administratrix of your husband's estate, you claim an as-

40

Paula B. Smythe, pro se.

signment from certain heirs of John Edward Hughes?

Mrs. Smythe: Yes, sir, all the paternal next of kin, heirs-at-law.

10

The Court: Will you give Mr. Callahan the names of those people?

20

Mrs. Smythe: Yes, sir. Henry Beere, John Beere of Hempstead, Long Island; Hector Beere of Brooklyn, New York; Margaret Van Wickler of Inwood, Long Island; Anna Carman, wife of Stephen H. Carman of Valley Stream, Long Island; Mary E. Everson, wife of Harry D. Everson of Bergenfield, New Jersey, children of Hector Beere; John Beere, Waterbury, Connecticut; Martha Uxton of Manchester, Connecticut; Charles Heaton, otherwise known as Charles Eaton, dead; Elizabeth Greenberg, wife of Charles Greenberg of Waterbury, Connecticut, and her husband, Charles Greenberg; Mary Cramwell, wife of Thomas E. Cramwell, of Oxford, Connecticut and her husband, Thomas E. deceased; Alfred Finch Reed, of Vallejo, California; Jane Baker (widow), 1 Melibia Square, Shebland Road, Ralston, N. E. London, England; Elizabeth Alice Murray and her husband, John W. Murray of St. Louis, Missouri; George Beere, Lehigh Hole, Peahill, North Bristol, England; Silas A. Wayne of St. Louis, Missouri.

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40

The Court: I understand that you alleged that your husband had an assignment of an interest in this property at Fort Lee, which is the subject of this suit, the assignment coming from the persons whose names you have read to Mr. Callahan, now, what title

Paula B. Smythe, pro se.

did you say these people had to the property at Fort Lee?

Mrs. Smythe: They are heirs that could be found on the paternal side.

The Court: Whom?

Mrs. Smythe: John . . . Claims that they are the Hughes' or some of the heirs of John Edward Hughes. He died in November. 10

The Court: Where did he die; where did he live?

Mrs. Smythe: He lived in Kings County, Brooklyn, and died in an insane asylum.

The Court: Mrs. Smythe will be permitted to file an answer nunc pro tunc within ten days, setting forth her claim of title in accordance with that which she has stated here orally and I take it, it is necessary to file a replication and that be considered as filed. 20

Mrs. Smythe: May I add, the powers of attorney are here and these heirs assigned for the money expended for them.

They assigned non-divided one half interest in this estate to my husband and these powers did not terminate at his death. 30

Mr. Dwyer: Will your Honor turn to page forty-seven of the stenographer's minutes. We offered a certified copy of the Law Department record and this was objected to because it was not exemplified. Since then we got permission to have it exemplified. I now hand the judgment rendered in the Supreme Court of New York, in the matter of Mattie Beere Haworth, Administratrix of the estate of Percy C. Beere, late of Marion- 40

Paula B. Smythe, pro se.

ville, Lawrence County, Missouri, deceased, for payment to her as such administratrix of the personal estate of John E. Hughes. We offer that in evidence.

10 (Admitted in evidence and marked "D-5".)

Mr. Dwyer: We offer in evidence an order amending that judgment entered in the same Court, March 29, 1929.

(Admitted in evidence and marked "D-6".)

Mr. Dwyer: We next offer an exemplified copy of an order entered in the same manner, in the same court, April 5, 1928, amending judgment of November 1, 1927.

20 (Admitted in evidence and marked "D-7".)

Mr. Dwyer: We next offer order directing payment to one of the parties named in the judgment and entered in the same manner on May 25, 1928.

(Admitted in evidence and marked "D-8".)

Mr. Dwyer: We next offer order further amending judgment, January 31, 1929.

30 (Admitted in evidence and marked "D-9".)

The Court: Mrs: Smythe, you listen carefully to this testimony and you will have opportunity to cross examine the witnesses if you care to do so.

John Beere, direct.

JOHN BEERE, sworn in behalf of the defendant.

Direct examination by Mr. Heilenday:

Mr. Heilenday: Your Honor, may we stipulate that the complainant is in possession of property?

10

The Court: Do you admit Mrs. Smythe, that the complainant is in possession of this land?

Mrs. Smythe: He was in possession a year ago.

Mr. Heilenday: We will admit that he went in possession and paid rent until November, 1902.

Mr. Heilenday: Also stipulate on which he has resided, is the property in controversy.

20

The Court: Mrs. Smythe, are you willing to admit that the property of which the complainant has been in possession is the property which is owned by John Edward Hughes?

Mrs. Smythe: Yes, sir.

The Court: It is the same property about which the controversy is raised?

Mrs. Smythe: Yes, sir.

30

Direct examination by Mr. Heilenday:

Q. Where do you live? A. Oceanside, Long Island.

Q. What was your father's name? A. Hector Beere.

Q. Your mother? A. Celia Beere.

Q. Did you have an aunt? A. Yes, sir, I had an aunt, yes, sir.

Q. What was her name? A. Margaret Hughes.

40

John Beere, direct.

- Q. Was she related to Hector Beere? A. A sister.
- Q. What was the name of her husband? A. What?
- Q. What was the name of the man she married? A. John Hughes.
- 10 Q. Is that the man they called Captain John Hughes? A. Yes, sir.
- Q. Did they have any children? A. One, as far as I know.
- Q. What was his name? A. John E. Hughes.
- Q. Was he related to you? A. A cousin of mine.
- Q. You knew John Hughes, did you not? A. I did.
- Q. Where did he live? A. In Brooklyn.
- 20 Q. Did he live any other place? A. Fort Lee, when he was a boy.
- Q. Did you ever live with him at Fort Lee? A. No, sir.
- Q. Did you ever go there and stop there for a day or two at a time? A. When he lived in Brooklyn, I stopped with him.
- Q. Was this John E. Hughes married or unmarried? A. Unmarried.
- Q. You have some brothers and sisters? A. Brothers and sisters.
- 30 Q. Yes? A. Yes, sir.
- Q. What were the names of your brothers? A. Henry and Hector.
- Q. Henry, Hector, and you had some sisters? A. Yes, sir.
- Q. What were their names? A. Alice. I can't hardly think of the names now.
- Q. Did you have a sister named Annie? A. Yes, sir.
- 40 Q. Margaret? A. Yes, sir.
- Q. Do you remember when your sister Alice was married? A. Married.

John Beere, direct.

Q. What was the name of her husband? A. Henry Burghard.

Q. Is that the Henry Burghard in court now?

A. Yes, sir.

Mr. Heilenday: Mr. Lippincott, will you stipulate that he is the one that testified before? 10

Mr. Lippincott: Yes, sir.

Q. Do you know Mr. Henry Burghard? A. Yes, sir.

Q. Did you stop at his place? A. I did.

Q. Do you know whether your brother Hector lived there? A. He lived there.

Q. And you stopped there occasionally? A. Yes, sir, when I was down there. 20

Q. Do you recall your father, do you remember?

A. Who?

Q. Your father? You were a young boy when he died? A. Yes, sir, seven or eight years old.

Q. Your mother lived after your father died? A. Oh, yes.

Q. You remember her, don't you? A. I do.

Q. Did you have any occasion to talk with your mother about your father's family? A. Yes, sir, she used to say they were quite wealthy and in Brooklyn, they owned a place and in Fort Lee, they owned a place. 30

Q. Did your mother ever talk about Margaret? A. Not very often, no.

Q. Your father's sister's name was Margaret? A. Yes, sir.

Q. Did you know her? A. No.

Q. Did your mother ever talk about her? A. She used to talk about her. 40

Mr. Lippincott: I don't want to be technical.

John Beere, cross.

The Court: You mean the question is misleading?

Mr. Lippincott: Yes, sir.

The Court: I believe it is.

10 Q. I am trying to find out whether your mother talked about your aunt Margaret? A. Yes, sir. She used to tell me quite a lot about her.

Q. About her family? A. Yes, sir.

Q. About her family? A. She mentioned them all when she mentioned one.

Q. Your mother is dead now, of course? A. She is dead, yes, sir.

Q. You don't remember any conversation with your father about his brothers and sisters? A. No, sir.

20 Q. Do you know whether your father was a native of the United States of America or came from some other country? A. Ireland.

Q. What part of Ireland? A. Tipperary.

Q. Do you know whether this cousin of yours, John Hughes, owned property in Fort Lee? A. I often heard him speak of that himself.

Cross examination by Mr. Lippincott:

30 Q. Did you ever know a man named Charles Heaton? A. No, sir.

Q. Did you ever have a first cousin by that name? A. What?

Q. Did you ever have a first cousin by that name? A. I did not.

Q. Did you ever know a cousin by the name of Anna M. B. Reed? A. No.

Q. Never heard of her? A. Never heard of her.

40 Q. Did you ever hear of a cousin, one Silas Wayne? A. No, sir.

Q. A Silas Murray? A. Yes, sir.

John Beere, cross.

The Court: Are these names that came out in previous testimony?

Mr. Lippincott: No, sir.

Q. How many John Beere's were there? A. As far as I know there was one John Beere.

10

Q. How many children did he have? A. Nine.

Q. Are you one of them? A. That is me, yes.

Q. Did you have a relative named Allie Langnor, or a Florence Langnor? A. No, sir.

Q. Mabel Langnor? A. No, sir.

Q. Did you know an Aunt, Mary O'Brien? A. Not to my knowledge, no.

Q. Did you have any cousins by the name of O'Brien that you know? A. No.

Q. Did you ever know a relative named St. Ledger Beere? A. No, sir.

20

Q. Mabel Beere? A. No, sir.

Q. Myrtle Beere? A. No, sir.

Q. Lydia Beere? A. No, sir, you are talking about my family?

Q. Do you know them? A. Yes, sir.

Q. What relation was St. Ledger Beere? A. Never heard tell of the man or woman whatever she is.

Q. Then you say you were the son of Hector Beere? A. Yes, sir.

30

Q. And your father was an Uncle of John Edward Hughes? A. An Uncle.

Q. Was he? A. He was, yes.

Q. How many children did your father have? A. Seven.

Q. What were their names? A. Alice, Margaret, Anna, I guess that is all as far as I can remember.

Q. These are your sisters and brothers you are mentioning? A. Yes, sir.

40

John Beere, cross.

Q. Did you ever know a cousin by the name of Elizabeth Greenberg? A. No, sir.

Q. Martha Uxton? A. No, sir.

Q. George Beere? A. No, sir.

Q. Mary Cramwell? A. No, sir.

10 Q. Jane Baker? A. No, sir.

The Court: Mrs. Smythe, have you any examination?

Cross examination by Mrs. Smythe:

Q. You are a Mr. John Beere? A. Yes, sir.

Q. What was your father's name? A. Hector Beere.

Q. Where was he born? A. Ireland.

20 Q. What county? A. County of Tipperary.

Q. What parish? A. I couldn't say, I don't know.

Q. How many brothers did your father have? A. I couldn't tell you that.

Q. Did you know how many sisters he had? A. Two that I know.

Q. That is all you know about it. A. Yes, sir.

Q. What was your grandmother's name? A. I couldn't tell you that.

30 Q. When did you first hear of the Hughes case being in litigation, who called your attention to it? A. Mr. Smythe.

Q. That was my husband. He called your attention to the case? A. Yes, sir.

Q. Did you ever sign a power of attorney for him to act as counsel? A. Yes, sir.

Q. I show you a power of attorney and ask if that contains your signature? A. I don't understand you, madame. (Mrs. Smythe hands paper to the court.)

40

John Beere, cross.

The Court: She asks you if that is your signature, John Beere?

A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

The Court: Do you know whose signature—look at that again, whose is the first signature appearing there? 10

A. Yes, sir.

The Court: Whose is it?

A. Henry Beere, my brother.

Q. Are you acquainted with his signature? A. Yes, sir. That is his signature all right.

The Court: Is the signature Hector that of another of your brothers? 20

A. Don't look like it.

The Court: Do you know any Margaret Van Wickler?

Q. That is her signature, Nathan Wickler that is his signature, Annie Coleman, I don't say that, Stephen H. Coleman, that looks like his writing, I couldn't swear for that one. 30

The Court: That is what?

A. Mary Elizabeth.

The Court: Mark this "D-6" for identification. (Assignment marked "D-6" for identification.)

Q. Just one question, when you signed this power of attorney, were all the people together that signed it? A. I don't think they were all in my house. 40

John Beere, redirect.

Q. But you went to a notary by the name of Toohey? A. Yes. We were all together, three of them were missing, they didn't come.

Redirect examination by Mr. Heilenday:

10 Q. Mr. Lippincott asked you whether you knew a long list of people, did any of those people live around this part of the country?

Mr. Lippincott: I object.

Q. Do you know if any of them lived around this part of the country? A. I did not.

Mr. Heilenday: That is our case.

The Court: Mrs. Smythe, if you have any evidence, now is the time to present it.

20 Mrs. Smythe: My evidence consists of the record of Kings County.

The Court: All right, produce the record.

Mrs. Smythe: I have it in this book.

The Court: Do you offer that?

(Record of Kings County Surrogate's Court offered in evidence and marked "D-10".)

30 Mrs. Smythe: I would like to present in evidence two letters received from the State Hospital in which this intestate case, John Hughes was a sick man.

The Court: Any objection to those two letters?

Mr. Heilenday: No objection.

(Letters placed in evidence and marked "D-11" and "D-12".)

40 Mrs. Smythe: I have also here a certified copy of the Surrogate's Court confirming the referee's findings.

(Record placed in evidence and marked "D-13".)

John Beere, redirect.

Mrs. Smythe: I offer this in evidence.
(Hands paper with newspaper clippings
on same.)

Mr. Lippincott: I don't like to be technical in this, but I think this evidence is irrelevant.

10

The Court: I sustain the objection to this offer of the order of publication in the matter of the accounting in the estate of John E. Hughes, Kings County Surrogate's Court.

The Court: Have you anything else to offer?

Mrs. Smythe: Anything else to offer?

The Court: You haven't offered any of the assignments yet?

20

Mrs. Smythe: I offer those ten assignments.

Mr. Heilenday: I object, they are not assignments, they are just powers of attorney.

Mr. Lippincott: I object, they are immaterial.

The Court: I will receive these.

(Assignments marked "D-14" in evidence.)

Mrs. Smythe: I would like to offer in evidence this letter addressed Messrs. Carrich and Ulrich of Jersey City, it is important to me.

30

Mr. Lippincott: I object.

The Court: Mrs. Smythe, it doesn't appear that W. G. Giddy ever signed this letter; there is no evidence he ever signed it. It does not appear to me that Mr. Giddy knew anything about the case. I can't see how this can be admitted in evidence.

40

Mr. Lippincott: I would like to offer a

Paula B. Smythe, cross.

certified copy of the record of the New Jersey Supreme Court in the matter of Mattie Beere, the defendant in this case, the judgment issued for lack of prosecution.

10 The Court: Any objections?

(Record placed in evidence and marked "C-1".)

The Court: Mrs. Smythe, coming in the case at this late day; the case will not only be decided on testimony of today but on testimony had in 1929, I believe it was. I believe you wrote me you were present in court?

20 Mrs. Smythe: I didn't know anything until weeks after.

The Court: You are familiar with the testimony?

Mrs. Smythe: Yes, sir. May I have an opportunity to question Mr. Dobbelaar?

The Court: You can call him as your own witness.

Mr. Lippincott: I have no objection.

The Court: That is all you want to offer?

30 Mr. Heilenday: There is one question I would like to ask Mrs. Smythe?

MRS. PAULA B. SMYTHE, sworn in behalf of defendants.

Cross examination by Mr. Heilenday:

Q. George Smythe was your husband, was he not? A. George A. Smythe.

Q. Is George A. Smythe dead or alive? A. He is dead.

40 Q. When did he die? A. July 17, 1920.

Q. Prior to his death, Mr. Smythe had written

Paula B. Smythe, cross.

the firm of McDermit, Enwright and Carpenter to prosecute this rejection suit? A. There was another suit before that.

Q. Prior to the death of Mr. Smythe, he had been in communication with McDermit, Enwright and Carpenter concerning this suit of Mattie Beere— A. He was in touch with those attorneys until one week before his death. 10

Q. Do you recall after his death, Mr. Carpenter trying to get in touch with Mr. Smythe and you told him that Mr. Smythe was dead?

Mr. Lippincott: I object to this.

The Court: I will admit the question.

Q. Do you recall about September, 1926, Mr. Carpenter tried to get in communication with you, didn't he write to Mr. Smythe? A. He did not. He didn't write to Mr. Smythe, he knew he was dead. 20

Q. He knew he was dead? A. Yes, sir.

Q. After Mr. Carpenter knew he was dead, didn't Mr. Carpenter try to get from you the information that Mr. Smythe had concerning the heirs? A. He did not.

Q. Didn't he communicate with you? A. I communicated with him.

Q. For what purpose? A. I don't know whether you have a right. 30

The Court: Yes.

Q. For what purpose? A. I was informed that after twenty years—after this money which was recovered by false statement, the sum of \$7,000 was recovered by false statement. All this work had to be done over again and then Mr. Smythe had it returned to the State Treasurer, and I was informed by a New York attorney, he was a nice 40

Lawrence Dobbelaar, direct.

attorney, he said that after twenty years it can be returned.

10 LAWRENCE DOBBELAAR, recalled on behalf of the defendant, Mrs. Smythe.

Examination by Mrs. Smythe:

Q. Do you remember me? A. Why, sure.

Q. What is my name, who am I? A. Mrs. Smythe.

Q. Do you remember when you saw me first, can you remember the year you saw me first? A. I can't remember the year.

20 Q. Try, please. A. You were up there a couple of times.

Q. When I was there the first time and when I was there the second time? A. We sat outside of the house and talked.

The Court: Was that during the lifetime of Mr. Hughes?

A. No.

The Court: After that?

30 A. After that.

The Court: Was it since the war?

A. Before the war.

Q. Try, please. Remember when you saw me, because, I will have to help you out. I think your memory will serve you? A. I couldn't tell you what year that was.

Q. Who was with me? A. Your husband.

40 Q. It was in March, 1908? A. In March, I know it was quite warm.

Q. It was in March, 1908, and when did you

Lawrence Dobbelaar, direct.

communicate first with your lawyer, before or after our visit to you? A. I guess about that time.

Q. Who was your lawyer then? A. Mr. Seufert.

Q. And he still is your lawyer? A. Yes, sir. He got to be a judge since and he didn't do it personally.

10

Q. You remember you saw me in 1908, it was 1908? A. Yes, sir.

Q. When did you see me again? A. I don't remember.

Q. Try? A. Yes, you were up to the house last summer.

Q. That is the second time you saw me? A. Yes, sir.

Q. Did you see me from 1908 to 1929? A. No.

20

Q. Do you remember 1908? A. I remember when you were there and when you went away and you said to my wife you hoped she would live there as long as she would live.

Q. Had you any children there? A. They were grown up.

Q. Were you married at that time?

Mr. Lippincott: I object.

The Court: I sustain the objection.

Q. Do you remember Mr. Williamson, the committee, he was the committee of Mr. Hughes? A. Yes, sir.

30

Q. Did you pay rent to him? A. I did.

Q. How much did you pay? A. Eight dollars.

Q. Eight dollars for what? A. A month.

Q. When did you begin to pay rent to Mr. Williamson? A. I couldn't tell you exactly, shortly after. After he got sick, since he was appointed guardian to Mr. Hughes.

40

Q. How long did you pay rent to Mr. Williamson? A. Until Mr. Hughes died.

Stipulation.

Q. Did you pay Mr. Williamson rent after Mr. Hughes died? A. I don't think so.

Q. Try, remember how long you paid rent to Mr. Williamson, it is very important.

10 The Court: Confine yourself to questions.

Q. How long after Mr. Hughes died, did you pay rent to Mr. Williamson? A. I didn't pay rent to him after his death to my knowledge. After I heard he was dead, I didn't pay any more rent.

Q. You claim you didn't pay rent in 1903, 1904? A. I couldn't tell what those years were.

Stipulation.

20

It is stipulated by and between counsel that John Edward Hughes died, intestate, seized of the real estate described in the complaint, on November 30, 1902, domiciled in the County of Kings, State of New York, leaving real and personal estate in the said State of New York. Nothing was known of his next of kin, and William B. Davenport, Public Administrator of the County of Kings was, on July 15, 1903, appointed to administer his estate; that thereafter there was extended litigation concerning the estate of the said John Edward Hughes in the State of New York, which did not terminate until November 21, 1927, when a final judgment was entered in an action pending in the Supreme Court of the State of New York, for the County of New York, in which it was finally determined who were the next of kin of the said John Edward Hughes, under the statute of distribution in force at the time of his death, in the State of New York.

30

40

That one George A. Smythe, a resident of the City, County and State of New York, who was a

Stipulation.

professional searcher for missing heirs, claimed that he had located the next of kin of the said John Edward Hughes, and, in 1915, he caused to be brought, on behalf of Mattie Beere Haworth and Margaret Beere, an action of ejectment in the New Jersey Supreme Court against the present complainant, the object being to obtain possession of the real estate described in the complaint. The present complainant answered, by filing a general denial, without setting forth his own title. While said action was pending, the said George A. Smythe died and thereafter, in 1926, the action was dismissed for want of prosecution. 10

That the only heir at law of the said John Edward Hughes was a maternal uncle, Percy C. Beere, who was domiciled at Marionville, in the State of Missouri; that the said Percy C. Beere died, intestate, a resident of said Marionville, on October 4, 1904, leaving a widow, now Mattie Beere Haworth, and as his only heir at law, an infant daughter, Margaret Beere, one of the defendants, who was then approximately three months of age, having been born on July 2, 1904. 20

That this stipulation shall be used as part of the State of the Case in the above entitled cause, in lieu of the documentary and other evidence submitted in the Court of Chancery on behalf of Margaret Beere in proof of the heirship of Percy C. Beere and on behalf of herself as his successor in interest. 30

SEUFERT & ELMORE,
Solicitors for Complainant-Appellant.

FRANK W. HEILENDAY,
Solicitor for Defendants-Appellees,
Margaret Beere and Mattie Beere Haworth. 40

Exhibit C-1.

State of New Jersey, }
 Bergen County, } ss.:

10 THOMAS E. ENGLISH, being duly sworn on his oath, says that he is the Special Deputy Sheriff named in the deputation endorsed and made a part hereof and that on the twenty-sixth day of February, 1915, instant, he served the said summons and complaint upon the defendant therein named Lawrence Dobbelaar in person, at his place of abode, Palisade Ave., near Main Street, Fort Lee, N. J., by exhibiting the said summons and complaint to said defendant, and explaining to him the contents thereof, and by delivering to Lawrence Dobbelaar a true copy of said summons and complaint.

THOS. E. ENGLISH.

Sworn and Subscribed before me this }
 27th day of February, A. D. 1915. }

LOUIS B. C. NESTEL,
 Notary Public.

30 State of New Jersey, }
 Bergen County, } ss.:

I, ROBERT N. HEATH, Sheriff of said County, do hereby depute and appoint Thomas E. English to be my Special Deputy, to execute and return the writ according to law.

WITNESS my hand and seal this twenty-third day of February, A. D. 1915.

ROBERT N. HEATH,
 Sheriff (L. S.).

40

Exhibit C-1.

SUMMONS.

The State of New Jersey,

To—Lawrence Dobbelaar
(L. S.)

10

YOU ARE SUMMONED to answer the annexed complaint of Mattie Beere, individually and as Guardian and Curator of Margaret Beere, an infant under the age of twenty-one years, in the New Jersey Supreme Court, wherein the said Mattie Beere, individually and as Guardian and Curator of Margaret Beere, demands of you the possession of certain lands and premises situate in the Borough of Fort Lee in the County of Bergen and State of New Jersey, and more particularly described in said complaint.

20

And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton within twenty days after service upon you of this writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said lands and premises.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court at Trenton, this twenty-third day of February, Nineteen hundred and fifteen.

30

WM. C. GEBHARDT,
Clerk.

McDERMOTT & ENRIGHT,
Attorneys.

40

Exhibit C-1.

COMPLAINT.

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

10

MATTIE BEERE, individually and as
Guardian and Curator of MARGARET BEERE, a minor,
Plaintiff,

v.

LAWRENCE DOBBELAAR,
Defendant.

In Ejectment.
Complaint.

20

(1) Plaintiff, Mattie Beere, as Guardian and Curator of Margaret Beere, was duly appointed such Guardian and Curator by the Probate Court of Mount Vernon, Lawrence County, Missouri, and resides at Marionville, in the State of Missouri.

(2) Plaintiff and the said Margaret Beere are the only known surviving heirs at law of John Edward Hughes; the said John Edward Hughes died on or about November 30th, 1902.

30

(3) Plaintiff demands of the defendant possession of ALL those certain lots, tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Fort Lee, in the County of Bergen in the State of New Jersey, and which on a map entitled "Map of Pond Park situate at Fort Lee Village, Town of Hackensack, Bergen County, New Jersey," filed in the office of the Clerk of Bergen County, April 7, 1864, are known as lots numbered 9, 10 and 11

40

fronting on a road leading from Fort Lee Turnpike

Exhibit C-1.

Road to Bulls Ferry and lots numbered 32, 33 and 34 fronting on Elizabeth Street at the corner of Parker Avenue as laid down on said map.

Being the secondly described parcel of land and premises conveyed by a certain deed made by Isaac Hopper, Sheriff of the County of Bergen to John Edward Hughes, dated March 6, 1882, recorded March 10, 1882, in the office of the Clerk of the County of Bergen in Liber C-11 of Deeds for the County of Bergen on page 311.

10

Being also the same premises conveyed by Franklin Wight and Mary E., his wife, to Daniel O'Connell, by deed dated June 25, 1864, recorded July 17, 1864, in the office of the Clerk of the County of Bergen in Book X-5 of Deeds for said County on page 62.

20

(4) Plaintiff says that the right of the said Margaret Beere and her right individually to the possession of the said lands and premises accrued on or about October 4, 1904, and that the defendant is wrongfully in possession of the said lands and premises and wrongfully deprives plaintiff of the possession thereof, to plaintiff's damage Five thousand dollars.

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

30

40

Exhibit C-1.

NEW JERSEY SUPREME COURT.

MATTIE BEERE, individually and as
guardian and curator of MAR-
GARET BEERE, a minor,

Plaintiff,

v.

LAWRENCE DOBBELAAR,

Defendant.

In Ejectment.
Rule Requiring
Defendant to
Plead.

10

It is, on this 18th day of July, 1917, ordered that
the defendant Lawrence Dobbelaar file his answer
to the plaintiff's complaint with the Clerk of the
Supreme Court on or before twenty days after the
service of a certified copy of this rule upon him.

20

Further ordered that a certified copy of this rule
be served upon the said defendant Lawrence Dob-
belaar personally or by leaving same at his resi-
dence or usual place of abode, on or before the
1st day of August, 1917.

Let this rule be entered in the minutes.

C. W. PARKER,
J. S. C.

30

Entered July 25, 1917,

On motion of McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

40

Exhibit C-1.

NEW JERSEY SUPREME COURT.

(Filed August 3, 1917.)

10

MATTIE BEERE, individually &c.,
Plaintiff,

v.

LAWRENCE DOBBELAAR,
Defendant.

In Ejectment.
Affidavit.

State of New Jersey, }
County of Hudson, } ss.:

20

HENRY SMITH, of full age, being duly sworn according to oath, upon his oath says that on July 31st, 1917, he served a certified copy of the rule requiring defendant to plead, entered July 25, 1917, upon the defendant Lawrence Dobbelaar personally in Fort Lee, Bergen County, New Jersey.

HENRY SMITH.

Subscribed and sworn to before me }
this 2nd day of August, 1917. }

30

(Seal) HENRY A. OETJEN,
Notary Public of New Jersey.

40

Exhibit C-1.

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

MATTIE BEERE, individually and as
Guardian and Curator of MARGARET BEERE, a minor,

Plaintiff,

v.

LAWRENCE DOBBELAAR,

Defendant.

In Ejectment.
Answer.

10

Defendant says that:

20

(1) That upon information and belief he denies the truth of the matters contained in the complaint.

J. LAURENS ELMORE,
Attorney for Defendant,
Englewood, N. J.

30

40

Exhibit C-1.

(Endorsed):

NEW JERSEY SUPREME COURT.

Bergen County.

10

Mattie Beere, individually and as
Guardian &c.,

Plaintiff,

v.

Lawrence Dobbelaar,

Defendant.

In Ejectment:

ANSWER.

20

J. Laurens Elmore,
Attorney of Defendant,
Englewood, N. J.

We consent to the filing of the within
as in due time.

Sept. 27, 1917,
McDermott & Enright,
Attys. of Pltff.

30

Filed Oct. 4, 1917,
Wm. C. Gebhardt, Clerk.

40

Exhibit C-1.

NEW JERSEY SUPREME COURT.

MATTIE BEERE, individually and as
Guardian and Curator of MARGARET BEERE, a minor,

Plaintiff,

v.

LAWRENCE DOBBELAAR,

Defendant.

10

Action at Law.

Notice of Motion.

To: McDermott & Enright, Esqs., Attorneys for
Plaintiff.

20

TAKE NOTICE that on the 5th day of October, 1926, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard at the State House, Trenton, New Jersey, before the above named Court, we shall move for judgment of *non pros* in the above case because of the failure of the plaintiff to notice said cause for trial or otherwise proceed in the same since March 16, 1921.

Dated, September 13, 1926.

30

SEUFERT & ELMORE,
Attorneys for Defendant.

40

Exhibit C-1.

(Endorsed) :

NEW JERSEY SUPREME COURT.

Mattie Beere, individually and as
Guardian and Curator of Margaret
Beere, a minor,

10

*Plaintiff,**v.*

Lawrence Dobbelaar,

Defendant.

Action at Law.

NOTICE OF MOTION.

20

Seufert & Elmore,
Attorneys for Defendant,
Englewood, New Jersey.

Service of within notice is hereby
acknowledged this 21st day of Sep-
tember, 1926.

McDermott & Enright,
Attorneys for Plaintiff.

30

Filed Sep. 23, 1926,
Edward J. Kelleher, Clerk.

40

Exhibit C-1.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">LAWRENCE DOBBELAAR, <i>Defendant,</i></p> <p style="text-align: center;"><i>ads.</i></p> <p>MATTIE BEERE, individually and as Guardian and Curator of MARGARET BEERE, a minor, <i>Plaintiff.</i></p> <p>Costs.</p>	<p>Action at Law.</p> <p>In Ejectment.</p> <p>Rule for Judgment.</p>	<p>10</p>
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This cause having been at issue in time for the same to be noticed for trial at the December term of court, 1917, and plaintiff having failed to serve a notice of trial for the September term, 1921, in this court, and having failed to file notice of trial for each of the subsequent terms as directed by Section 149 of the Practice Act of 1903, and due notice of the motion for non-suit having been served upon the attorney for plaintiff,

It is on this sixth day of October, 1926, on motion of Seufert & Elmore, attorneys for defendant, ORDERED that a judgment of non-suit be entered against the plaintiff, and in favor of the defendant, and that defendant recover of the plaintiff his costs of this suit to be taxed.

Entered October 6, 1926.

Allowed in open Court.

On motion of

Seufert & Elmore, Attys.

Exhibit C-1.

NEW JERSEY SUPREME COURT.

10	MATTIE BEERE, individually and as Guardian and Curator of MAR- GARET BEERE, a minor, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>v.</i></div> LAWRENCE DOBBELAAR, <div style="text-align: right;"><i>Defendant.</i></div> Costs \$	Action at Law. (Ejectment.) Judgment of Non Suit. Seufert & Elmore, Attorneys.
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20 Judgment entered this sixth day of October, A.
 D. nineteen hundred and twenty-six in favor of
 defendant and against the plaintiff for the sum of
 costs.

WM. S. GUMMERE,
 C. J.

30 I, the undersigned, Clerk of the Supreme Court
 of the State of New Jersey, do certify that the
 foregoing is a true copy of the entire proceedings
 in the above stated cause as the same remain on
 file and of record in my office.

[SEAL] In testimony whereof I have set my
 hand and the seal of said Court at Tren-
 ton, this fifteenth day of May, A. D. nine-
 teen hundred and twenty-nine.

FRED L. BLOODGOOD,
 Clerk.

NEW JERSEY

Court of Errors and Appeals

LAWRENCE DOBBELAAR,
Complainant-Appellant,

vs.

JOHN EDWARD HUGHES, et al.,
Defendants-Respondents.

On Appeal
from Court
of Chancery.

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS MATTIE BEERE HAWORTH AND MARGARET BEERE.

Statement of Facts.

This action was brought to quiet the title claimed by Lawrence Dobbelaar to the premises located at Fort Lee, New Jersey, described in the bill of complaint.

The bill of complaint alleges that the complainant went into possession of the premises in December, 1891, as a tenant of John Edward Hughes; that he paid the rent agreed upon to John Edward Hughes for more than ten years, until he was notified that his landlord had become incompetent and that John T. Williamson was appointed committee of his person and estate; that thereafter he paid rent to the committee until some time in 1903. The day when he ceased to pay rent does not defi-

nately appear in the testimony, except that it was in the year 1903. About this time, the complainant learned of the death of his landlord and thereafter he paid rent to no one and no one demanded that he pay rent.

John Edward Hughes died, intestate, domiciled in Kings County, New York, on November 30, 1902. In 1904, about two years after the death of John Edward Hughes, some people, whose names he did not remember, called on the complainant and claimed to be heirs of John Edward Hughes, but the complainant "disputed" their claim. He said he thought he owned the property, but that he did not say anything about it and said, "I didn't have any business to talk with anybody about it."

In 1907, Edmond Hughes called on the complainant and demanded that he deliver the property to him or purchase it. The complainant gave him no "satisfaction."

In March, 1908, one George A. Smyth called on the complainant and said that he had found some heirs, but the complainant "considered it a kind of ghost story," and he could not "go by anything of that kind." In 1915, the said George A. Smyth, who devoted his time to searching for missing heirs and recovering property to which he believed them to be entitled, caused an action of ejectment to be brought, on behalf of Mattie Beere Haworth and Margaret Beere, in the Supreme Court of the State of New Jersey, against the complainant. The complainant answered and the action lay dormant until 1926, George A. Smyth having died in the meantime. In 1926, the complainant, who was a defendant in the ejectment action, moved to dismiss the latter action for want of prosecution, which motion was granted.

Under the laws of the State of New Jersey, the sole heir at law of John Edward Hughes was Percy C. Beere, an uncle, who survived him by less than two years, dying on October 4, 1904, domiciled and a resident of Marionville, in the State of Missouri. He died intestate, leaving as his sole heir at law the defendant-respondent Margaret Beere, who was then approximately three months of age, having been born on July 2, 1904. The title of her father, Percy C. Beere, to the real estate vested in her, subject to the dower rights of her mother, the defendant-respondent Mattie Beere Haworth.

Under the laws of the State of New York, as they existed at the time of the death of John Edward Hughes, collateral relatives were admitted as heirs at law and next of kin, with the result that his heirs and next of kin were very numerous, living in many different parts of the world. They were not known at the time of his death, or for some time thereafter. Within a few years after his death, litigation was commenced in the State of New York, for the purpose of determining heirship and kinship. These proceedings were not terminated until November 21, 1927, when there was a final decree entered in the Supreme Court of the State of New York, held in and for the County of New York, determining this question.

While the said action, to determine who were the heirs and next of kin of John Edward Hughes, was pending in the Supreme Court of the State of New York, this action was commenced by the claimant, on March 9, 1927.

The foregoing is a somewhat concise statement of the facts which have been established by the testimony, and these cannot be successfully disputed.

Argument.

To succeed herein, it was necessary for the complainant to establish the following:

1. That some time before October 4, 1904 (the day on which Percy C. Beere died), he, the complainant, disclaimed and disavowed his tenancy and began to hold adverse and hostile to the owner and to all the world.

2. That since that time and until the time of the commencement of this action, he unreservedly and steadily claimed that he, himself, and no other person, was the owner.

3. That his conduct was such that his claim of ownership was brought to the knowledge of the owner, or that it was so notorious the law will presume the owner had knowledge of it.

If the complainant has failed in any of these particulars, then his claim to ownership must fail.

We now proceed to analyze the conduct of the complainant and the testimony which he submitted.

The conduct of the complainant as late as March, 1908, evidenced nothing more than a silent determination on his part to claim the property. It is doubtful if it evidences this.

The time when the complainant publicly announced by word or deed, if he ever did, that he was claiming the property adversely, prior to the commencement of this action, does not appear from the evidence or from any inference which it is proper to draw from the evidence.

The complainant admits that in 1904 certain people, whose names he did not remember, called on him and claimed the property. It does not defi-

nately appear what, if any, claim he made, concerning the property, when these people called.

The complainant also admits that Edmond Hughes called on him in 1907 and claimed the property. It does not appear what claim he then made, but he said he gave Mr. Hughes no satisfaction.

The complainant admits that George A. Smyth called on him in 1908, claiming the property on behalf of someone whom he represented; that Mr. Smyth told him what he considered a "ghost story" and he admitted that he did not tell Mr. Smyth he claimed the property.

The time when Mr. Smyth called was in the month of March, 1908, approximately three and one-half years subsequent to October 4, 1904, at which time the owner of the property was a minor, less than four years of age, and, of course, the statute did not begin to run against the minor until she became twenty-one years of age.

The bill of complaint alleges that the complainant went into possession as the tenant of John Edward Hughes in December, 1891; that he paid rent either to Hughes or to his guardian until a date which is uncertain. The complainant testified (p. 43, lines 5-6) that the last time he paid rent was in 1903. In his complaint he alleges that he has been "in open, actual, exclusive, continued, continuous, undisturbed and uninterrupted possession since November 7, 1902," yet John Edward Hughes did not die until November 30, 1902.

It will be noted that the complainant does not allege that his possession has been hostile (p. 7, line 30).

The complainant testified (p. 42) that about 1891 he rented the property. That he and his landlord had discussed the subject of a sale to the com-

plainant by the landlord, when the latter told him he could have sold the place, but he wanted him, the complainant, to have it. That this was the conversation when he last saw his landlord, which was in April, 1902 (p. 43, line 12; p. 47, line 10).

John Edward Hughes having become insane, and one John T. Williamson having been appointed committee of his estate and person, directed the complainant to pay rent to him, which he did, until some time which does not definitely appear from the testimony.

The complainant having learned that his landlord died late in 1902, or early in 1903, ceased to pay rent and thereafter no one asked him to pay rent.

The complainant stated, over objection (p. 43, line 38, to p. 44, line 18), that if he had been notified to pay rent, he would not have done so, because he was under the impression the property belonged to him, since his landlord, then deceased, had told him he wanted him, the complainant, to have the property.

There is no evidence whatever that the complainant held title adversely to his landlord. We call attention to the testimony of the complainant (p. 52, line 32, and continued to the end of the third line, p. 53) which clearly shows the state of mind and attitude of the complainant at that time:

“Q. Now, they claimed to be the heirs of John Edward Hughes? A. Yes.

Q. And you disputed that, didn't you? A. That is what you say.

Q. You say in your affidavit that you disputed their claim and refused to deliver possession of said premises? A. I didn't think they were what they claimed to be.

Q. And that is the reason you refused to deliver possession at that time was because you thought they weren't the heirs of John Edward Hughes? A. I don't know."

In 1907, Edmond Hughes called and said he was a half-brother (p. 44, line 32), and offered to sell the property to the complainant. The latter did not tell Edmond Hughes that he was holding the property adversely, and when asked what he said, he answered (p. 44, line 38), "Well, I did not give him any satisfaction. I do not remember how it ended." He was asked why he did not mention the fact that John Edward Hughes wished him to have the property. His answer was he "did not want to get into any argument like that" (p. 57, line 35).

The complainant in March, 1908, had a call from George A. Smyth, who made claim on behalf of someone. He told the complainant he had found some heirs and "a lot of stuff," which the complainant considered "a kind of ghost story." He did not tell Mr. Smyth that he was claiming the property adversely, and when asked what he did tell him, he answered (p. 44, lines 25-30):

"Q. Well, what did you do? A. I couldn't say anything to him. I thought that thing would come up before the court eventually and I couldn't go to work—if someone came along and said, 'Why, I own this' or 'I am related' or something of that kind—I couldn't go by anything of that kind."

The complainant was cross-examined and stated that after his landlord had become insane he paid rent as before, but paid it to the committee. He believed that even if his landlord was restored to health, he would not give him the property for

nothing. He stated that if any claimant had established his right to the property, he would have paid rent. That if Edmond Hughes had established his right, he would either have had to pay him rent or get out.

The complainant believed he would be able to purchase the property on easy terms from his landlord (Hughes), because the latter wished him to have the property. He admits that he did not get a deed (p. 49, line 1), and in his next answer he states, "I thought there would be some kind of a settlement about it" (p. 49, line 5). He was asked why he continued to pay rent after his landlord told him, in April, 1902, that he wanted him to have the property. His answer was (p. 49, line 13), "Well, I paid it as long as the man lived." He then stated that he did not know what arrangement his landlord would make concerning the property, but believed he would have obtained the property either by deed or will.

In his affidavit attached to the complaint (p. 11, line 30), the complainant did not state that Mr. Hughes had given him the property in 1902, or that he wanted him to have the property.

The foregoing analysis of the testimony is sufficient to show that it is utterly lacking in what is essential to establish what the complainant must establish in order to succeed, as suggested in the paragraphs numbered "1," "2" and "3." It is possible there was a silent determination on the part of the complainant to claim the property adversely, but if there was he carefully concealed it for several years after the death of his landlord.

The statute did not begin to run until the complainant began to claim adversely and did something which made this claim known to his landlord.

On the death of John Edward Hughes, Percy C. Beere was his landlord; after the death of the latter, his minor daughter was the landlord of the complainant, and her mother had a dower interest in the property. If up to the time of the death of Percy C. Beere, the complainant did nothing to indicate to the world that he was holding adversely, then the statute had not begun to run up to the time that Percy C. Beere died, which was on October 4, 1904, and it did not run during the minority of the daughter, Margaret Beere.

POINT I.

Complainant did not acquire title by adverse possession.

It must be remembered that the complainant went into possession as a tenant of John E. Hughes. It must also be remembered that the complainant has no color of title.

The presumption is that the complainant remained in possession in subordination to the title of the true owner. In *Johanson v. Atlantic City R. R. Co.*, 73 Law 767, at page 768, the Court said:

“The general rule is that where the possession of land is separated from the title, the law will not presume that the possession is adverse; but every presumption is in favor of possession in subordination to the title of the true owner.”

What actually happened was that the complainant simply remained in possession after the death of John E. Hughes. Of course, he did not pay any rent, but that was because the rightful owner,

Percy C. Beere, did not claim such rent. Mr. Beere lived in Missouri and he never heard of the death of his nephew, John E. Hughes. When Mr. Beere died in October, 1904, his daughter Margaret was, as already stated, only three months old.

The complainant did not tell anyone that he claimed to be the owner of the property, and he did not openly disclaim holding under the true owner, nor did he bring home to the true owner any notice of his intention to disavow the owner's title. In *Thompson on Real Property*, Volume 2, Section 1481, page 633, the author says:

“ * * * However, where a possession commenced rightfully, and with the consent of the owner, nothing is to be presumed to make it adverse. Mere holding over, after the term ended, is not evidence of an adverse possession, and the possessor will be regarded as a tenant at will of the landlord unless he can show that since the expiration of the lease he has held forcibly or has acquired a title paramount to that under which possession was originally taken. In the absence of a different rule, created by statute or by express contract, where a tenant holds over after the expiration of a written lease, the law implies that he holds over subject to the terms of the previous lease so far as they are applicable to a periodic holding. The rights and duties of the parties are controlled by the contract under which the entry was made. * * * ”

Volume 3, Section 2524, page 643, contains this language:

“Possession will not ripen into title, no matter how long continued, unless the occupant asserts an exclusive ownership in himself. It is essential that the adverse claim-

ant, in making his entry upon the land, should have acted in good faith in the belief that he had title. His possession should be based on a claim of ownership or title in order to render it adverse. The intention with which possession is taken or held is regarded as a controlling factor in determining whether or not it is adverse. There must be an intention to claim the title as owner, and in derogation of the rights of the true owner. This intention to claim as owner is said to be the very essence of title by adverse possession, and to say that the possession must be hostile is equivalent to saying that it must be under a claim of right. Of course, this principle must not be so extended as to contravene the other principle that a party may claim adversely, though he knows that his title is defective, but he must claim a right to the land. The adverse claimant must have actual exclusive possession under claim of specific title, and not under a general assertion of ownership."

In Volume 2, Section 1418, page 554, at page 555, is found the following:

" * * * In order to set the statute of limitations running in favor of the tenant who attempts to avail himself of it in order to acquire a title by adverse possession, he must openly and explicitly disclaim and disavow any and all holding under the landlord; and further, he must unreservedly and steadily assert that he himself is the owner of the true title, all of which must be brought to the knowledge of the rightful owner."

In order for the complainant to acquire title by adverse possession, his possession must have been hostile. The complaint alleges (par. 4) that complainant has been in open, actual, exclusive, con-

tinued, continuous, undisturbed and uninterrupted possession of the premises since November, 1902. There is no allegation that the possession was hostile, neither is there any testimony to this effect.

Thompson on Real Property, Volume 3, Section 2523, page 642, contains the following:

“One’s possession of land must be hostile to any claim of right not only by the owner, but by all the world, excepting only the sovereign. This hostility must be present at the inception of the adverse holding and continue throughout the entire period of limitation. By this is not meant that the original entry must be hostile, but that the acts by which the possession becomes adverse; in other words, whether the possession was originally hostile or not, it must have been hostile at the time the statute of limitation began to run, and to have continued to be so during the full period. It matters not what the character of the possession was originally, it must become hostile in order that it may be deemed adverse. In order that the possession be hostile within the meaning of the rule, there need be no ill-will, malevolence, or desire to injure, or even that there may be a dispute, but it means a holding or possession by the occupant, as owner, and therefore against all other claimants, including the true owner.”

In speaking of adverse possession by a lessee, the same author, Volume 2, Section 1689, page 905, says:

“After the expiration of his lease, a tenant may disclaim and disavow his tenancy without first surrendering possession of the leased premises; but in order to make the holding adverse there must be a clear, positive and continued disclaimer and disavowal

of the landlord's title brought home to him by distinct notice. The statute of limitations, in the case of an adverse possession by a tenant, runs from the time the landlord receives notice that the occupancy is hostile; and a tenant is not required to yield possession and again enter the premises. But while the term continues, a tenant's possession is not adverse to the title of the lessor unless made so by some act of disseisin to which the lessor assents. A disclaimer by the tenant or his attornment to a stranger during the continuance of the term will not make his possession adverse. Some overt act is necessary to make a tenant's holding adverse, and his silent determination to hold adversely is ineffectual to accomplish that result without some outward change of possession. The majority of authorities lay down the rule that the tenant's estoppel continues after the lease expires, until he has surrendered possession or given notice that he does not intend to hold in subordination to the title under which he entered. * * *

A tenant can not by merely ceasing to pay rent to his lessor and paying it to another person, change the tenancy so as to enable himself to dispute the title of his landlord. Mere non-payment and non-demand for rent, no matter how long continued, are insufficient to bar landlord's title, whatever effect they may have on his right to recover rent.
* * * "

The burden was on the complainant to prove his right by adverse possession by clear and convincing proof, and not merely by a preponderance of the evidence.

Northern R. Co. v. Demarest, 94 N. J. L. 68; 108 Atl., p. 376.

The doctrine of adverse possession is to be taken strictly; and such possession is not to be made out by inference, but by clear and positive proof. See *Shields v. Ivey*, 52 Law 280, at bottom of page 281, where the Court said:

“The doctrine of adverse possession is to be taken strictly and such possession is not to be made out by inference, but by clear and positive proof.”

Complainant must prove such adverse possession beyond a reasonable doubt.

Rowland v. Updike, 28 Law 101.

In *Leport v. Todd*, 32 Law 124, at page 128, which was a case where a tenant claimed adverse possession, the Court said:

“FIRST. The defendant, by his counsel, insisted and asked the court to charge the jury, that if they believed that Abram J. Drake entered into the possession of the said premises as a tenant of John Hannah, he was to be presumed to have continued there as a tenant until the contrary was proved.

“I think it must be conceded, upon reflection, that the court erred in refusing to charge, as requested, upon this point. It appeared from the testimony of several witnesses, and, indeed, was a fact that was not in dispute, that Abram J. Drake, while possessed of the premises in question, declared that he had entered as the tenant of John Hannah, who was the admitted owner. The counsel for the defense stood on the ground, that as he had entered as tenant, in presumption of law, such tenure continued until the presumption was overcome by evidence. This appears to have been the rule as heretofore understood; nor am I aware of any case which throws it in doubt. The

denial of the right of the landlord on the part of the tenant, in the feudal system, was deemed a breach of faith, highly penal in its consequences, and such denial has always been regarded in law as an unlawful act, and the result is, that if it is alleged such act was committed by the tenant, he who asserts the doing of the wrong must prove it. Indeed it is clear, that the law not only presumes that the tenant holds possession of the demised premises in allegiance to his landlord until the reverse appears, but that it also demands very plain proof of the fact that the tenant disclaimed such allegiance. The true principle was forcibly stated by the Court of Appeals in South Carolina, in these words, viz.: 'That when a tenant claims to hold adversely, he must show when that intention was made known to his landlord.' *Whaley v. Whaley*, 1 Spear 225. By which it is to be understood, that a disclaimer by the tenant will not be implied, and can only be proved by express notification, or by its equivalent—some unmistakable act. I think the court should have charged as requested, to the effect that it is a legal presumption that a possession, beginning in the assent of the landlord, continues in subordination to his title until a change of tenure is shown by the evidence. There was error in this particular."

The failure of the rightful owner to claim the property is not the same as a claim of adverse possession by the complainant.

In *New Jersey Title & Realty Co. v. Bowyer et al.*, 98 Atl. 838, at page 839, the Court said:

"In defining what constitutes adverse possession the following is stated in 1 Am. & Eng. Enc. Law, 789:

'In order to constitute an effective adverse possession there must be an ouster

of the real owner, followed by an actual, notorious, and continuous possession by the adverse claimant, with an intention on his part to claim in hostility to the title of the real owner. The intention with which possession is taken or held is regarded as a controlling factor in determining whether or not it is adverse. There must be an intention to claim the title as owner, and in derogation of the rights of the true owner.' ”

In *Myers v. Folkman*, 89 Law 390, at page 392, is found the following:

“(2) The second difficulty in the plaintiff's case is his failure to show adverse possession prior to 1906. He has contented himself with showing peaceful possession. He seems to think that a failure of the rightful owner to make claim is the same as a claim of adverse right made by him and his predecessors in title. It is, however, well settled that mere possession without claim of right or intent to disseize the real owner is not enough to constitute adverse possession. As Chief Justice Beasley says in *Lepport v. Todd*, 32 N. J. L. 124, 131: ‘It is the existence of an intention to claim the fee, and the doing of some act indicative of such intention, which convert the occupation of land into an adverse possession; and this is the doctrine on which the decision of every case proceeds.’ So well settled is the doctrine that Justice Depue speaking for the Court of Errors and Appeals in *Foulke v. Bond*, 41 Id. 527, repeatedly takes it for granted. Thus he says: ‘We have seen that entry under color of title confers an advantage in that it operates, under some circumstances, as a disseizin, and determines the quo animo with which the entry was made. Having color of title is also advantageous to the disseizor in giving char-

acter to his possession after entry made.' So he speaks of an 'intention to assert ownership' as evidence of adverse possession and of the necessity that the nature of the possession should be such that the real owner must be presumed to know that there was a possession adverse to his title, under which it was intended to make title against him."

In order for the tenant to hold adversely to his landlord, it is necessary for the tenant to renounce the idea of holding his tenancy and to set up and assert an exclusive right in himself. It is also essential that the landlord should have actual notice of the tenant's claim, or that the tenant's acts of ownership should be of such an open, notorious and hostile character that the landlord must have known of it.

1 *Ruling Case Law*, p. 747.

Were this Court to hold that the complainant had begun holding *adversely* from the time of the death of Mr. Hughes, it would be tantamount to holding that every tenant begins to hold adversely immediately upon the death of his landlord. No case has been cited, nor can any such case be found, to sustain so novel a proposition.

Under POINT I, page 5, of appellant's brief appears the statement that Vice-Chancellor Bentley said that the statute of limitations had begun to run. Vice-Chancellor Bentley also stated (p. 56, line 20) :

"You have got to show not only possession, but open and *adverse* possession."

It will thus be seen that the Court had clearly in mind that the complainant would fail unless he

proved, in addition to occupancy, that the possession was *open and adverse*.

The complainant has failed to cite any case where a tenant acquired title by adverse possession against his landlord.

Under POINT II, page 7, of his brief, the appellant quotes a portion of the opinion in the case of *Page v. Gaskell*, 87 Atl. 460, 84 N. J. L. 615. He refrained from quoting that portion of the opinion which sustains the contention of the respondents; it reads as follows (at p. 618):

“The possession of her surviving husband, therefore, from the time of her death, became a holding adverse to the lawful owner, provided, of course, that such holding was adverse within the legal definition. In *Foulke v. Bond*, 12 Vroom (41 N. J. L.) 527, it was held that: ‘If the parties are strangers in title, possession and the exercise of act of ownership are in themselves, in the absence of explanatory evidence, proof of an ouster of the true owner.’ And Mr. Justice Depue, speaking for this court at page 545, observed: ‘The principles on which the doctrine of title by adverse possession rests, are well settled. The possession must be actual and exclusive—adverse and hostile—visible or notorious—continued and uninterrupted. Notoriety of the adverse claim, under which possession is held, is a necessary constituent of title by adverse possession, and therefore the occupation or possession must be of that nature that the real owner is presumed to have known that there was a possession adverse to his title, under which it was intended to make title against him. *Cornelius v. Giberson*, 1 Dutcher (25 N. J. L.) 1; *Cobb v. Davenport*, 3 Vroom (32 N. J. L.) 369, 386; *Proprietors v. Springer*, 4 Mass. 416.

A party relying on title derived from such a source must prove possession in himself or in those under whom he claims, of such a character as is calculated to inform the true owner of the nature and purpose of the possession to which the lands are subjected. The question whether possession has been held adversely continuously for the period of 20 years, with the requisite notoriety, is one of fact for the jury.’”

Clark v. Lane is cited by appellant under POINT II, page 11. In this case, certain land had been conveyed to Aaron Clark. He entered into possession of more land than was actually included in the conveyance and, undoubtedly, claimed that the additional land was included and held it for the requisite period. This case does not support the claim of the complainant.

Under POINT III, page 15 of his brief, the appellant cites the case of *Spottiswoode v. Morris & Essex R. R.*, 61 N. J. L. 322, and quotes from page 329 of the opinion. The only point involved in that case is set forth on page 332 of the opinion, as follows:

“In considering the effect of the statute of limitations no reference has been made to the disabilities which affect the running of the statute. No question of that kind arises in this case. We simply decide that adverse possession under our statute for the period of twenty years confers title by adverse possession, which is not lost by the re-entry of the adverse claimant and his possession short of twenty years, which would give him a new title.”

The case of *Stid v. Lieberman*, 132 Atl. 295 (4 Misc. 192), is also cited by the appellant (p. 17).

This was an action for trespass, and it was not necessary for the plaintiff to prove ownership in order to recover. Immediately following the portion of the opinion quoted by the appellant appears the following:

“But proof of ownership by the plaintiff was not a necessary element in determining his right to recover damages for the unlawful act of the defendant. An action of trespass to land is a possessory action, and the party in possession is entitled to recover for injury done to the freehold to the extent of that injury unless the defendant shows something in mitigation of damages. *Todd v. Jackson*, 26 N. J. Law 525, 538; *Lehigh etc. Railway Co. v. Antalics*, 81 N. J. Law 686; 80 A. 469.”

Under POINT III of his brief (p. 13), the complainant quotes from the opinion in the case of *Van Wickle v. Alpaugh*, 3 N. J. L., p. 38, which opinion contains a quotation from the case of *Den v. Prosser*. In that part of the opinion quoted, it is said that, even assuming the adverse claimant had gone into possession by consent, the adverse holder by “tendering the money” did an act which was hostile and equivalent to a claim that the person in possession had complied with an agreement which entitled him to the property.

Under POINT III of his brief (p. 14), the complainant refers to Section 16 of the Act of 1874. This is cited as authority for his claim that, after the death of Percy C. Beere, the statute continued to run against the minor. The statute did not begin to run until the complainant began to claim *adversely* and did something which made this claim known to his landlord.

The complainant must prove adverse possession beyond a reasonable doubt. He is presumed to have continued as a tenant until the contrary was shown. All he has shown is non-payment of rent. The real reason for the non-payment was uncertainty as to whom it should be paid.

In his brief the complainant repeatedly states that the statute had begun to run when Percy C. Beere died; but statement is not proof. He has proved no facts which warrant a finding that the statute had begun to run as late as March, 1908. If he had any intention to hold adversely as early as 1904, he carefully concealed it from everyone who might be interested. The complainant need not cite authorities to support his claim, that if the statute had begun to run before Percy C. Beere died, it was not interrupted during the minority of his daughter. It is proof that it had begun which he needs; and there is no such proof.

It is quite certain that for several years after the death of John Edward Hughes it never occurred to the complainant to assert ownership. The proof justifies the inference that it was not until after the failure of the action brought in 1915 that it occurred to him to claim adversely.

There is another reason why the rule should be strictly enforced in this case. It is the disability of Margaret Beere for so many years after she became seized of the property. When title to the property vested in her, she was aged three months and two days, and wholly unable to assert her rights then, or for many years thereafter. The law will not permit her to be deprived of her property by adverse possession, except on proof that the requirements of the law have been complied with in every respect.

The complainant has not proved the following:

That before October 4, 1904 (the day on which Percy C. Beere died), he disclaimed and disavowed his tenancy and began to hold adverse and hostile to the owner and to all the world.

That commencing some time before October 4, 1904, and until the commencement of this action, he unreservedly and steadily claimed that he himself, and no other person, was the owner.

That his conduct was such that his claim of ownership was brought to the knowledge of the owner, or that it was so notorious the law will presume the owner had knowledge of it.

It was essential that the complainant prove all these. Until he did so, the defendants were obliged to prove nothing. He must rely on the strength of his own title, not on the weakness of the title of the defendants or any of them. The complainant having failed in these essentials, the Court of Chancery could not do otherwise than decree that he had not established adverse possession. Whether or not the decree of the Court was in other respects correct is of no concern to the complainant, although, under the stipulation printed on pages 90 and 91, the complainant admitted that the decree was in all other respects correct.

If any excuse for the delay of the defendant Mattie Beere in asserting her title is required, it is found in the long and expensive litigation concerning the estate of John E. Hughes, which did not terminate until after the commencement of this action.

The dismissal of the action brought by Mattie Beere Haworth and Margaret Beere in 1915 for want of prosecution has been fully explained; and if it was not explained, the dismissal is of no benefit

whatever to the complainant. It is well to remember that this action was dismissed on the motion of the present complainant at the October Term, 1926, and that the present action was commenced about five months later.

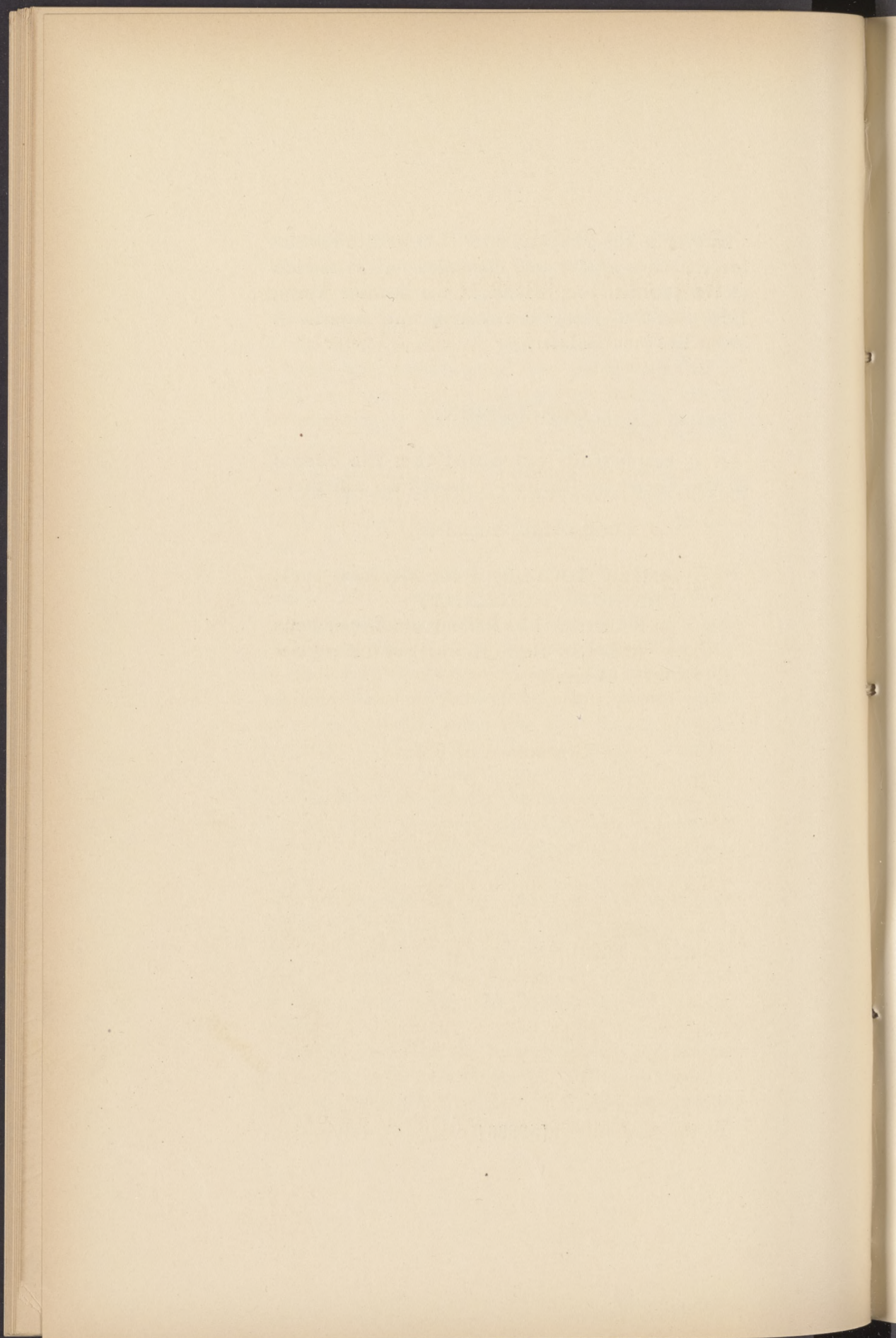
CONCLUSION.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

JOHN J. DWYER (of the New York bar),
FRANK W. HEILENDAY,

Solicitors for Defendants-Respondents
Mattie Beere Haworth and Margaret
Beere.



New Jersey Court of Errors and Appeals

LAWRENCE DOBBELAAR,
Complainant-Appellant,

v.

JOHN EDWARD HUGHES, *et als.*,
Defendants-Respondents.

On Appeal from
Court of
Chancery.

BRIEF ON BEHALF OF COMPLAINANT- APPELLANT.

This case comes up on bill from the Decree of the Court of Chancery, advised by Vice-Chancellor BIGELOW, in favor of the defendants-respondents.

Statement of Facts.

The bill of complaint in this case was filed to quiet title to certain lands and premises in the Borough of Fort Lee, more particularly described therein. The ground upon which the title was claimed by the complainant-appellant is adverse possession for more than twenty years.

The facts, as produced at the hearings (there being two) the first, before the late Vice-Chancellor BENTLEY on May 9, 1929, at which all of the testimony of the complainant-appellant and his witnesses to establish the adverse title was submitted, disclosed the following:

That the appellant, who, at the date of the hearing in 1929 was 78 years of age, became a tenant of the said John Edward Hughes on the property

in question in 1891 and continued as such tenant until Mr. Hughes' death in November of 1902; that during Mr. Hughes' lifetime he called several times at the premises and there were negotiations between the appellant and Mr. Hughes in regard to the purchase of the property by the appellant (State of Case, pp. 42-44). Appellant, however, was unable to purchase, and from the conversations, as disclosed by the testimony, between Mr. Hughes and the appellant, the appellant believed that on Mr. Hughes' death he intended the property to belong to the appellant.

Shortly prior to Mr. Hughes' death, he became insane and a guardian was appointed for him. From the date of the appointment of the guardian until Mr. Hughes died, the appellant paid the rent to the guardian.

Immediately upon the appellant's discovery that Mr. Hughes was dead, he ceased to pay rent, or to recognize anyone as entitled to the property.

Almost immediately after Mr. Hughes' death, numerous claimants appeared and demanded possession of the property, to all of whom the appellant refused to give up the possession of the premises. Since 1902 the appellant has occupied the premises as his own, made all repairs, paid all taxes, and in every way lived in open, notorious and adverse possession to any and all claimants and he has successfully resisted any and all attempts on the part of the various claimants to oust him from possession.

In 1915 the answering defendants in this suit, and the respondents to this appeal, instituted a suit in ejectment, which suit was pending until 1926 when, on application of the appellant herein (the defendant in the ejectment suit) a judgment for the complainant-appellant herein and the defendant therein, was entered for lack of prosecution.

Said John E. Hughes died in November of 1902, leaving Percy C. Beere as his only uncle, and numerous cousins, the issue of deceased uncles and aunts. Under the law of New Jersey, said Percy C. Beere was, of course, entitled to the property to the exclusion of the various cousins of the deceased. The said Percy C. Beere died October 4, 1904, leaving his widow, Mattie Beere, now Mattie Beere Haworth, one of the answering defendants-respondents in this suit, and a daughter, Margaret Beere, the other answering defendant-respondent. The said Margaret Beere was an infant about three years of age at the time of the death of Percy C. Beere.

Counsel for the respondents obtained an adjournment from Vice-Chancellor BENTLEY for the alleged purpose of securing cumulative testimony with reference to the relationship of the answering defendants-respondents to John Edward Hughes, deceased, who was the record owner of the property. Such testimony was never offered.

The second hearing was before Vice-Chancellor BIGELOW on October 14, 1930, at which time some testimony was offered with reference to the relationship of the answering defendants-respondents to the said John E. Hughes, and the balance on the part of a Mrs. Paula Smythe to establish certain alleged assignments from various heirs of John E. Hughes.

Argument.

The appeal presents three (3) issues:

1. The decision of the Court below was against the weight of the evidence.
2. The Court erred in its ruling as a matter of law.
3. The title by adverse possession should have been decreed for the complainant-appellant.

POINT I.

The decision of the court below was contrary to the evidence.

In its opinion (State of Case, p. 34), the Court below quotes from an excerpt of the testimony, which testimony appears on page 44 of the State of Case, as follows:

“The following passage from examination of the complainant is significant: ‘Q. Now, has anyone ever claimed this property—tried to get this property away from you? A. Why, Smythe came there and said he had found some heirs, and he told me a lot of stuff, and I considered it a kind of ghost-story. Q. Well, what did you do? A. I couldn’t say anything to him. I thought that thing would come up before the court eventually and I couldn’t go to work—if someone came along and said, “Why, I own this” or “I am related” or something of that kind—I couldn’t go by anything of that kind. Q. Mr. Dobbelaar, did anyone else come to see you about this property? A. Edmond Hughes came from Hamburg. Q. Who did he say he was? A. He said he was a half brother. Q. What did he say to you? A. Well, he wanted to sell it to me. Q. What did you do? A. Well, I didn’t give him any satisfaction. I don’t remember how it ended. Q. Now, did anyone else see you about it? A. No, I don’t remember anybody else.’”

A careful perusal of the entire testimony of the appellant will clearly show that the Court did not accurately grasp the thread of thought contained in the testimony of the appellant and is absolutely contrary to the reaction of the late Vice-Chancellor BENTLEY who heard the testimony in open court, as will clearly appear by the following answer

of the Court to a question of respondents' counsel to the appellant on cross examination (State of Case, p. 53) :

"So that the thing that made you refuse to deliver possession was you disputed their claim to being heirs; is that right?"

"The Court: I don't think that is what he meant. What he meant was he disputed their claim to this particular property."

and again on page 56 of the State of Case, the reaction of Vice-Chancellor BENTLEY to the testimony is clearly disclosed by the Court's ruling on a question asked on cross examination of the appellant as to whether he would have paid rent to Edmond Hughes had Hughes definitely established his right to the property, in which the Court says:

"But the statute had begun to run and hadn't expired in 1907."

Furthermore, the answering defendants-respondents offered no testimony whatever to controvert the question of adverse possession, and Vice-Chancellor BIGELOW, in his opinion, says that adverse possession began at the earliest date, in his opinion, on October 4, 1904, which is the date of the death of Percy C. Beere, the father of the defendant-respondent, Margaret Beere, who was then an infant of the age of two or three years, and, as a result of that opinion and in disregard of the testimony, prevented the statute from beginning thereon until the said Margaret Beere became twenty-one years of age.

The only testimony submitted on the question of adverse possession is by the appellant and his corroborating witnesses, and is to the effect that he has resided there since 1891; that since the death of John E. Hughes, in 1902, he has not paid rent;

that he paid all taxes and assessments, made all repairs, and specifically, that he built a new foundation wall around the building; and no testimony was offered by the defendants to controvert those facts.

Applying the rule laid down in the case of the *Northern R. R. of N. J. v. Demarest*, 108 Atl. 376, at page 378, the Court says:

“Defendant produced no evidence on this subject; the evidence mentioned stood uncontradicted; and the fact that the *locus in quo* is a part of the lands condemned was thus conclusively proved.”

the testimony of the complainant-appellant must be taken as true.

It is, therefore, respectfully submitted that the decision of Vice-Chancellor BIGELOW, that adverse possession did not start to run until October 4, 1904, is against the weight of the evidence and that the decision should have been that adverse possession had started prior to that date, to wit, from the date of death of John E. Hughes, in November, 1902.

POINT II.

The Court erred in its ruling as a matter of law.

In Vice-Chancellor BIGELOW's opinion, pages 33 to 35 in the State of Case, the Vice-Chancellor erred in two particulars.

First, the rule applied by the Vice-Chancellor that the appellant, having been a tenant of Mr. Hughes and remaining in possession after Mr. Hughes' death, is presumed to have been a tenant of his heir until some action was taken to terminate it, is not applicable to the facts disclosed in the case at bar for the reason that in the case

at bar action was taken by the appellant to terminate any question of tenancy. The uncontradicted testimony is that, during the lifetime of Mr. Hughes, he and appellant discussed the question of transfer of the property to the appellant and that during one of their conversations (State of Case, pp. 42-44) Mr. Hughes stated that he, Mr. Hughes, had a purchaser or could sell the premises, but that he, Mr. Hughes, wanted the appellant to have it; and, as a result of that conversation and the various negotiations, the appellant believed that he was to have the property when Mr. Hughes died; and, further, his failure and refusal to pay rent to any claimant, who came to the premises and claimed possession thereof, certainly is such action tending to the termination of any lease or tenancy as to make the rule of law laid down by the Vice-Chancellor inapplicable to the facts disclosed in this case, and is contrary to the decisions in this State, as will hereinafter appear.

In the case of *Page v. Gaskill, et al.* (87 Atl. 460, 84 N. J. L. 615), in which case the first wife of George Gaskill was the sister of John Showell, the prior owner of record of the premises in question in that case:

“When Mary Ann Gaskill, John Showell’s sister, died in 1857, her surviving husband, George Gaskill, remained on the premises, and in 1859 married the defendant, Louise Gaskill. The possession of the Gaskills was not disturbed, and they paid no rent. They built a fence inclosing two sides of the premises, and planted a tree, some bushes, and flowers thereon, built an arbor, and planted grapevines. In 1880 they added a new story and a new roof, opened more windows, and repaired the weather-boarding. John Showell, owner of the paper title, was a close neighbor all the while, and did nothing to interrupt this possession.”

In its opinion, the Court said:

“It is unnecessary to decide whether the possession of Mrs. Gaskill and her husband was or was not adverse, for certainly, upon her death, the husband’s possession immediately commenced to be adverse to the title and right of possession of the owner, John Showell. *Doe dem. Parker v. Gregory*, 2 Ad. & E. 14, is in point. In that case a widow, tenant for life of lands under a will, married. She died, and her husband held for more than 20 years after her death, when the heir at law of the devisor brought ejectment against him, and the court held that the defendant’s possession was wrongful from the very hour when his interest expired by his wife’s death; that it was clear that he might have been immediately turned out by ejectment, and, therefore, that his continuing the same possession for 20 years entitled him to the protection of the statute of limitations, and that the action against him had been brought too late.”

Applying this case to the facts disclosed in the case at bar, it will be seen that the right to possession of the premises vested in Percy C. Beere on November 30, 1902; that the appellant learned of the death of the said John E. Hughes in December of 1902, or the early part of 1903 at the latest and from thenceforth, ceased to pay any rent for the premises. Certainly there was no privity of contract between Percy C. Beere and the appellant, and the testimony shows the intention on the part of the appellant to contest and dispute any and every claimant’s right to the premises from the minute of learning that John E. Hughes was dead. Certainly, his action in ceasing to pay rent to anyone, and the intention he disclosed, and his subsequent actions, and his contesting the suit subsequently started by the answering defendants-respondents in this cause clearly and positively

overcomes the presumption that there was ever any relationship of landlord and tenant between the appellant and Percy C. Beere. It must be recalled, in this connection, that Percy C. Beere, during his lifetime failed and neglected to assert his right to possession to the property and allowed that right to lie dormant until his death; that he failed to make any effort to oust the appellant from the possession of the premises; that the appellant has from 1902, or early in 1903 at the latest, exercised every act of open, notorious, continuous and hostile possession against all the world to the premises in question, and that, therefore, the relationship of landlord and tenant between the appellant and Percy C. Beere, the sole surviving uncle of John E. Hughes, the holder of the paper title, not only never existed, but there were, prior to October 4, 1904, the date of death of Percy C. Beere, many acts of ownership performed by the appellant, which the said Percy C. Beere could have ascertained had he so desired and had he taken the trouble to investigate, and

Secondly, the court below has ruled that the secret attitude on the part of the appellant was insufficient to make his possession adverse to the title of the landlord, and the Vice-Chancellor in his opinion (State of Case, p. 35) says:

“Complainant testified as follows: ‘Well, we (complainant and Mr. Hughes) were talking on and off about my buying the place and his selling it to me, and then I commenced to think about moving, and then he didn’t like the idea of moving without giving him three or six months’ notice, and then he came over afterwards, and he says, “I could have sold the place, but I want you to have it,” and that that was the last I saw of him. And then he got sick, and then I heard afterwards that he was dead.’ Complainant further testified that

after this conversation he continued to pay rent, but that after Mr. Hughes's death he considered that he, complainant, owned the property and that his title sprung from the conversation above quoted. This secret attitude on the part of the complainant was insufficient to make his possession adverse to the title of his landlord. *Leport v. Todd*, 32 N. J. L. 124; *N. J. Title, etc., Co. v. Bowyer*, 98 A. 838. He did nothing and said nothing which might constitute notice to his neighbors or to the world at large, or to the true owners of the property, that he claimed ownership or the right to possession by any title other than that of tenant."

It is submitted that a careful reading of the testimony of the appellant (State of Case, pp. 40 to 63 inc.) does not furnish any foundation for the statements hereinabove immediately set forth. The appellant testified that he thought they were ghost-stories; that he did not believe them; and that he would not deal with them. He was in possession; the various people claimed possession, claimed to be heirs, claimed to know who the heirs were, and made all sorts of claims to which the appellant listened and refused to move. Certainly there is no compulsion on the part of the appellant to say "I own these premises," but his every act in refusing to deal with any and every claimant who appeared, is certainly such open, notorious, and hostile possession as to apprise the world of the fact that he claimed possession as of right against any and all claimants, and, when the answering defendants-respondents in this suit commenced their proceeding in the New Jersey Supreme Court in 1915, he again contested the right to the property.

The Vice-Chancellor mentions the fact in his opinion at page 35 of the State of Case, that the appellant did not plead by what title he held the

premises, but pleaded a general denial. It is respectfully submitted that this is the proper pleading in a suit of ejectment; and it is conceded that in 1915, he could not have established his right to the premises in a court of law by adverse possession, for the 20 years had not then expired; but the answering respondents in this suit, apparently could not at that time establish their right, since they allowed the case to lie dormant for eleven years until judgment was entered for the appellant herein (the defendant in that suit) in 1926.

Furthermore, the testimony is uncontradicted, that he has been in actual possession of the premises since 1891; that since 1902, the date of the death of John E. Hughes, the holder of the paper title, he has made all repairs to the building, has paid all taxes and assessments and in every way has exercised complete control and dominion over the premises uninterruptedly for more than 20 years. It should be borne in mind that the Vice-Chancellor who decided this case did not hear the testimony of the appellant, whereas the ruling made by the late Vice-Chancellor BENTLEY (State of Case, p. 56), at the time the testimony was given, clearly discloses that his reaction to the testimony was that adverse possession was had commencing prior to 1907, the date that one of the claimants called and endeavored to secure the premises; and that the testimony shows that the appellant had paid taxes and exercised every act indicating intention to own and possess the premises from the time of the death of John E. Hughes to the commencement of this suit.

On the question of secrecy and the requirements indicated to be necessary from the opinion of the Court below, we desire to submit to the Court's particular attention the case of *Clark v. Lane*, 2 N. J. L. page 397.

In that case the original owner, Thomas Clark, devised to Aaron Clark "All the land I purchased from Andrew Hampton, adjoining the lands of Terril." The evidence disclosed that the lands purchased by the original owner lay on both sides of a road; the residue of the lands of the original owner was devised to Abraham Clark, the father of Aaron Clark. On the death of the original owner, Abraham Clark went into possession of all the land; that Aaron Clark conveyed the land adjoining the land of Terril, which land was a portion of the original purchase; that Abraham Clark kept possession of the land on the opposite side of the road and treated it as if it were his own. On his death he devised all of his land to his son, Abraham, under whom the defendant held the property. It was contended that all the land purchased by Hampton was devised to Aaron Clark; that a road running through it, separating one part from the other made no difference; that the word ALL fully denoted the intent of the testator to give him all of the land purchased from Hampton. In its opinion the Court said (p. 399):

"But it appears fully evident, that Abraham Clark did not hold the land on the northeast side of the road as guardian to his son; but from the death of his father, as his own, he considered it as not comprehended in the land devised to Aaron, his son, but that his father's will in that respect, only embraced the lands on the southwest side of the road, adjoining the land of Terril, he occupied and in all respects treated the land in question as his own, and used it with the other part of his farm, to which it was adjoining; and finally devised it away at his death. I therefore consider the possession of Abraham Clark, and those holding under him, as adverse possession;—this being upwards of thirty years uninterrupted, the defendant must be protected by the Stat-

ute of Limitation. The case is too bald to admit of further litigation; the plaintiff must be called."

Certainly there is no indication in the opinion just quoted that the adverse possession ruled to have been acquired in that case, was any more notorious than the case at bar, and this, in view of the fact that the adverse possession was determined for the father against his son, neither of whom, so far as the opinion discloses, ever discussed the question of ownership and possession. Certainly no mention was made, so far as the opinion shows, by the father that he intended to claim this property from his son, by adverse possession.

It is respectfully submitted, therefore, that the ruling of the court below in this respect is erroneous and that the decree should have decreed title in the appellant by adverse possession.

POINT III.

The Court of Chancery should have decreed title in the complainant-appellant by adverse possession.

Title by adverse possession has been recognized from the earliest times. The first Statute on the subject was passed by the Legislature of this State in 1799 and there were numerous amendments thereof, until 1874, when the Statute now in force was enacted by the Legislature.

In 1808 the Supreme Court, in the case of *Van Wickle v. Alpaugh*, 3 N. J. L., page 38; ruled that "twenty years adverse possession gives title to the land." In its opinion the Court said, at page 45:

"Lord MANSFIELD, in *Den v. Prosser*, Cowper, 218, says—'A man may come in by rightful

possession, and yet hold over *adversely*; if he does, such holding over, under circumstances, will be equivalent to an *actual ouster*.' Again, in the same page,—'If tenant *pur auter vie*, hold for twenty years after the death of *cestuy que vie*, such holding over will, in ejectment, be a complete bar to the remainder-man or reversioner, because it was *adverse* to his title.' * * * But suppose even that he went into possession by consent, yet there is strong evidence of an adverse holding; the tendering the money was an act hostile to Johnson's right; it was equivalent to saying, I have complied with my agreement, and I mean to hold the land as my own. Whether it was a legal tender made in due form, is of no consequence, if it manifested an intention to hold the land to himself in his own right."

The Statute in force at the date of death of John Edward Hughes, under which title became vested, is Section 16 of the Act of 1874 (Compiled Statutes, 1910, p. 3169) which was Section 9 of the Act of 1799. The section in force provides as follows:

"Right of entry into lands, etc.; when barred; disabilities.—That no person who now hath, or hereafter may have, any right or title of entry into any lands, tenements, or hereditaments, shall make any entry therein, but within twenty years next after such right or title shall accrue; and such person shall be barred from any entry afterwards; provided, always, that the time during which the person who hath or shall have such right or title of entry, shall have been under the age of twenty-one years, or insane, shall not be taken or computed as part of the said limited period of twenty years (Rev. 1877, p. 597)."

The Court of Errors and Appeals, in the case of *Foulke v. Bond*, 41 N. J. L., page 527, at page 545, says:

"The principles on which the doctrine of title by adverse possession rests, are well

settled. The possession must be actual and exclusive—adverse and hostile—visible or notorious—continued and uninterrupted.”

In *Spottiswoode v. Morris & Essex R. R. Co.*, 61 N. J. L. page 323, at page 329, the Court said:

“The legislation that applies to this subject is section 16 of the act of 1874 which was section 9 of the act of February 7th, 1799. Neither of these sections—sections 1 and 2 of the act of 1787 and section 9 of the act of 1799—conflicts with or modifies the other. * * * In den, *ex dem. West v. Pine*, 4 Wash. (U. S.) 691, 695, Mr. Justice WASHINGTON remarks that there is no express repealing clause in the act of 1799 of the preceding act of 1787, nor such repugnance as would operate as a repeal by implication ‘The length of possession prescribed by the first act is thirty years, and by the latter twenty. But by the former this possession will not avail the defendant unless it was commenced or was founded on a proprietary right, &c., or was obtained by a *bona fide* purchase of the land of some person in possession and supposed to have a legal title thereto. * * * The act of 1799 is entirely of a different character. It is unimportant under that act whether the defendant, or the person under whom he claims, entered into the possession under an apparent title or tortiously, and the limitation is arrested in its progress by any subsequent disability, the duration of which forms no part of the computation of time.
* * *”

Applying the facts in this case to the Statute and the opinions above set forth, it is obvious that the decree in the Court of Chancery is in error and that the decree should have been that the appellant herein has an absolute vested title in the lands and premises described in the bill of complaint and that no other person or persons have any interest therein for the following reasons:

Immediately upon the death of John Edward Hughes, on November 30, 1902, the title to the premises described in the bill of complaint vested in Percy C. Beere, an uncle of the decedent and the appellant having immediately ceased to pay rent for the premises, the right of entry and possession of the property immediately vested in the said Percy C. Beere. It must be remembered that this was in December of 1902 or January of 1903 at the latest, and the failure of Percy C. Beere to enforce his right, and upon his death (he having died on October 4, 1904), the continued failure of his heirs and next of kin to enforce their right for twenty years, bars them and each of them and all persons claiming under them, from any right in the property.

The uncontradicted testimony is (State of Case, pp. 40-63) that the appellant ceased to pay rent in the late part of 1902 or the early part of 1903; has continued to reside in the premises continuously; has contested every claimant's right to the premises; has made repairs, paid the taxes and has used the premises in every way as his own, and, therefore, the latest date, upon the uncontradicted testimony, upon which title vested in the complainant, is the early part of 1923. That the Statute had begun in 1907 to run is determined by the late Vice-Chancellor BENTLEY on page 56 of the State of Case.

A careful reading of the testimony will most clearly disclose that the appellant believed that the property was his; was intended to be his by the decedent; and that he intended from the date he learned of the decedent's death in 1902 or January of 1903, at the latest, to contest the right of any and every person to any interest in the property; and regardless of the fact that the counsel for the respondents endeavored to secure a state-

ment from the appellant herein, on cross examination that he retained possession of the premises because of the fact that he did not believe that the claimants were the heirs, and made a most searching and thorough endeavor to discredit the testimony of the appellant, nevertheless, the testimony of the appellant, on page 59 of the State of Case, clearly shows that from the time he ceased paying rent, he would not have given up possession of the property without Court litigation. In this connection it is again called to the Court's attention that the late Vice-Chancellor, who heard the testimony, called to the counsel's attention that the appellant meant "that he disputed their claim to this particular property."

In *Stid v. Lieberman*, 132 Atl., page 295, at page 296, the Supreme Court said:

"We are asked to set aside the verdict, so far as it awarded damages for the cutting of timber on the triangular tract, for the reason that there was no proof of ownership thereof in the plaintiff. There was evidence that he and his predecessor in occupation had been in possession of that land for much more than 20 years, and that raises a presumption of title by adverse possession in the plaintiff."

In the case of *Myers v. Folkman*, 89 N. J. L., page 390, at page 392, the Court cites the opinion of Chief Justice BEASLEY, in *Leport v. Todd*, 32 N. J. L. 124, 131:

"'It is the existence of an intention to claim the fee, and the doing of some act indicative of such intention, which convert the occupation of land into an adverse possession; and this is the doctrine on which the decision of every case proceeds.' So well settled is the doctrine that Justice DEPUE speaking for the Court of Errors and Appeals in *Foulke v. Bond*, 41 *Id.* 527, repeatedly takes it for granted. Thus

he says: 'We have seen that entry under color of title confers an advantage in that it operates, under some circumstances, as a disseizin, and determines the *quo animo* with which the entry was made.'

Again referring to the case of *Van Wickle v. Alpaugh*, 3 N. J. L., page 38, the Court laid down the rule:

"If a tenant *pur auter vie*, hold for twenty years after the death of *cestuy que vie*, such holding over will, in ejectment, be a complete bar to the remainder-man or reversioner, because it was *adverse* to his title.'

The testimony produced at the trial clearly shows that the appellant intended to get title to this property and that his possession of the property was hostile and adverse to any and every claimant, and in addition to his possession being hostile and adverse, the said possession was continuous from the date of death of the said John Edward Hughes and that, therefore, the said Percy C. Beere, the heir of John Edward Hughes, having failed during his lifetime to protect his rights of entry and possession of the premises and after him, his heirs, having failed to protect their right of entry and possession, the title to the property vested, in fee, in the appellant, in 1923 at the latest.

Nor does the fact that Percy C. Beere died intestate, in 1904, leaving one of the defendants-respondents herein, an infant, have any effect upon the date upon which title to the property in question vested in the appellant. The Statute had already begun to run and once it is started, no disability arising thereafter stops its running.

In *Clark v. Richards*, 15 N. J. L., page 347, the Court said, at page 354:

"Since, it is a settled rule, under *all* the British statutes of limitation, that when the

statute has once begun to run, its course will not be impeded, or its operation suspended, by any subsequent disability.

“The same rule has uniformly prevailed in this State, and must still prevail, unless a new one has been introduced, in regard to actions on *specialties* and *records*, by the 6th and 7th sections of the act of 1799: and in suits for the recovery of *real estate*, by the 9th and 10th Sections of that Act.”

(The 9th Section of the Act of 1799 is the 16th Section of the Act of 1874, the Act under which the title in question vested.) At page 356, the Court continues:

“The settled rule under all the English statutes of limitation, and under the first three Sections of our own act, is that if *the person* to whom the right of entry or of action *first* accrues, is *at the time* when such right accrues, under any of the disabilities named in the statute, the statute does not begin to run against him, until the disability is removed; but the moment such disability ceases, the statute is called into operation, and no subsequent event will arrest its course.”

In the case of *Thorpe v. Corwin*, 20 N. J. L., page 311, at page 316, the Statute of Limitations makes the lapse of time a positive and legal bar. When once it has begun to run against a person under no legal disability, it pursues its course uninterrupted by any subsequent events; and when the period prescribed by the Statute has elapsed, the bar is complete and its force can neither be strengthened nor impaired by anything that has happened in the meantime.

From the above decisions it becomes apparent that from the earliest times the rule is that when the Statute has begun to run, no disability of any subsequent owner, either by descent or purchase,

can affect or undo the run of the Statute or its doctrine. In the case at bar it will be seen that the right of entry into the premises (therefore, the right of action against the appellant) accrued to Percy Beere, as one of the heirs-at-law of John Edward Hughes, deceased, immediately upon the death of John Edward Hughes and, therefore, the Statute had begun to run against him during his lifetime; and the fact that he died intestate, leaving a minor heir, can have no effect upon the computation of time necessary to vest the complete title to the premises in question unto the complainant-appellant.

There is just one further feature of the decision of the court below that we desire to call to the attention of the Court, that is, in its opinion the Court said (State of Case, p. 34) :

“He (referring to the appellant) never gave notice of his intention to quit and never received notice from the landlord. Probably he never heard of Mr. Beere until after the latter’s death and so far as it appears Mr. Beere never knew of Mr. Dobbelaar’s existence.”

It is submitted, that in delving into possibilities, the Court fell into error in that, without having heard the testimony and having had the advantage of seeing the attitude and actions of the appellant on the witness stand, he arrived at his conclusion merely from reading the testimony and without giving full consideration to the reaction of the Vice-Chancellor who heard the testimony of the appellant as disclosed by the late Vice-Chancellor’s remarks and rulings during the trial as shown by the State of Case on pages 53 and 56.

Furthermore, the effect of the ruling has totally disregarded the decisions of this State by failing to apply the rule of presumptive notice. There is

no question but that Percy Beere became vested, in fee, in this property in 1902, and he having become vested and having been the nearest relative of John Edward Hughes, is charged with presumption that he knew of his rights. Any other ruling absolutely nullifies the provisions of the Statute of Limitations as to adverse possession and leaves the door open to the most gross fraud to be practiced upon the Courts and in given cases, to make title to property by adverse possession impossible of attainment. The facts in this case clearly disclose the evils of such decisions. If Percy Beere had lived and failed to take any action to secure his rights, the title in this case, by adverse possession, would have vested in the appellant in January of 1923 at the latest, our claim being that it vested in December of 1922, twenty years from the date upon which the appellant learned of the death of Mr. Hughes. However, because of the death of Mr. Hughes and the failure of the Court to apply strict construction of the rule of constructive notice to Mr. Percy C. Beere, and his determination that the adverse possession did not commence until October 4, 1904, the date of death of Percy C. Beere and the date upon which title to the property vested in Margaret Beere, the infant daughter of the said Percy C. Beere (then of the age of two or three years) the statute could not have begun to run until 1922 or 1923 and title by adverse possession could not become vested until 1942 or 1943, more than 40 years after the rights of Percy C. Beere had become vested.

That is the effect of the ruling in this case and the portion of the opinion just quoted above clearly discloses that it is one of the features upon which the Court based its opinion. As the result, the Court below, has, by its opinion and decree, entirely nullified the provisions of Section 16 of the

Statute of Limitations of 1874 (Compiled Statutes 1910, p. 3169), which deals with the time necessary to perfect title by adverse possession.

CONCLUSION.

It is, therefore, respectfully submitted that the appellant herein has clearly established continued, hostile and adverse possession in the premises disclosed in the bill of complaint for more than twenty years and that the decree of the Court of Chancery should be reversed to the end that the appellant herein should be decreed to have title to the premises described in the bill of complaint, in fee, and that no other person or persons have any right or interest therein.

Respectfully submitted,

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